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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 115.

DAVID H. MOFFAT, JUNIOR, AND ROBERT E. CARR, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 11, 1880.

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INDEX.

	Original.	Print.
Caption	1	1
PROCEEDINGS IN THIRD JUDICIAL DISTRICT COURT.		
Bill filed	1	1
Leave granted to amend bill	2	1
Bill of complaint	3	2
Subpœna and return	11	6
Demurrer of Cook	12	7
Moffat, jr	17	10
Stanton	23	13
Precipe for discontinuance as to certain defendants	29	16
Amended bill	30	16
Demurrer of Moffat, jr., to amended bill	48	23
Demurrer of Stanton and Cook to amended bill	52	25
Subpœna and return	56	26
Exceptions of complainant to answer of defendant Moffat, jr., for impertinence	58	27
Exceptions of complainant to answer of Stanton and Cook for impertinence	61	29
Exceptions of complainant to answer of Moffat, jr., for insufficiency	65	30
Exceptions of complainant to answer of Stanton and Cook for insufficiency	67	31
PROCEEDINGS IN CIRCUIT COURT UNITED STATES.		
Cause dismissed as to Stanton and Cook, and Moffat and Carr ordered to plead	70	32
Answer of Moffat, jr., to amended bill	70½	32

	Original.	Print.
Answer of Stanton and Cook to amended bill	79	36
Second amended bill	90	40
Answer of Moffat, jr., and Carr to second amended bill	96	45
Replication	101	50
Cause referred to master	102	50
Order consolidating causes	102	51
Deposition of Gleason F. Lewis	103	51
Stipulation as to testimony	119	57
Master's report	121	57
Exhibit A (map)	123	57
Exhibit B (map)	123	57
Testimony of D. W. Van Horn	124	57
T. O. Boggs	130	60
Luke Cahill	138	64
R. K. Vandiver	143	65
G. M. Woodworth	153	70
Geo. Peck	158	72
A. E. Carpenter	164	74
Charles W. Bowman	168	76
John Carroll	174	78
Linus E. Boomer	177	80
Samuel A. Hutchins	181	82
George H. Hill	193	86
Samuel N. Wood	201	90
Daniel Witter	208	93
Jerome B. Chaffee	225	100
Samuel S. Landon	236	106
Richard Simpson	242	109
Oral testimony	252	113
Memorandum on back of envelope	254	114
Certificate of location	255	114
Receiver's receipt	256	114
Non-mineral affidavit	257	115
Certificate of register and receiver	258	115
Proof of right of pre-emption:		
Affidavit of right of Peasley and Quinlan	259	116
Florida land scrip No. 4	261	117
Memorandum on back of envelope	265	118
Certificate of location	266	119
Receiver's receipt	267	119
Non-mineral affidavit	268	119
Certificate of register and receiver	269	120
Affidavit of Beck and Hall	270	121
Florida land scrip No. 176	271	122
Testimony of Lucius Payton	275	123
Eugene K. Stimson	290	129
Ferd. Barndollar	295	131
H. K. Pickney	296	132
L. Payton (recalled)	300	133
Thomas O'Brien	303	135
J. O. Bosworth	309	137
Clarence Clark	318	140

	Original.	Print.
Proof of right of pre-emption:		
Testimony of Charles A. Cook	322	142
L. Dongal	323	142
Hyatt Hussey	326	144
E. W. Cobb	327	144
Certificate of Judge Hallett	331	146
Stipulation of counsel	339	149
Decree	340	149
Appeal bond	345	151
Citation	347	153
Proof of service	348	153
Clerk's certificate	349	154

1 Pleas in the circuit court of the United States for the district of Colorado.

Present, the honorable the judges thereof.

Be it remembered that heretofore, to wit, on the third day of June, A. D. 1874, the same being one of the regular judicial days of the June term, A. D. 1874, of the district court of the United States of the third judicial district of the Territory of Colorado, begun and holden at the city of Pueblo, in said district, on Tuesday, the second day of June, A. D. 1874—present, the honorable Moses Hallett, chief justice of the supreme court and judge of the district court of the third judicial district of Colorado Territory; H. C. Alleman, esq., attorney of the United States for Colorado Territory; George A. Bute, clerk of said court; M. A. Shaffenburg, United States marshal, by Abe R. Ellis, deputy—the following order was had and entered of record in said court in said cause, to wit:

Order: Bill in chancery filed in district court, Col. Ter.

Now comes H. C. Alleman, attorney of the United States for Colorado Territory, and now here, in open court, presents to the court certain bills in chancery to compel surrender of certain land patents for vacation and cancellation, to wit:

* * * * * * *

THE UNITED STATES OF AMERICA *vs.* IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., Robert E. Carr, trustee, Philip Quinlen, Henry H. Perry, 2 Michael Quinlen, Orvin R. Peasley.	G. D., N. 289.

And afterwards, and on, to wit, the 3rd day of June, A. D. 1875, the same being one of the regular judicial days of the June term, A. D. 1875, of said court, the following other proceedings were had and entered of record in said court in said cause, to wit:

Order: Leave to amend bill by July 20th, 1875.

THE UNITED STATES OF AMERICA *vs.* IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., Robert E. Carr, trustee, Philip Quinlen, Henry H. Perry, Michael Quinlen, Orvin R. Peasley.	In chancery.

This day the demurrer of the defendants Stanton, Cook, and Moffat, jr., to the bill herein came on to be heard, the defendants appearing by H. C. Thatcher & Hugh Butler, and the complainant by H. C. Alleman, esq'r., attorney of the United States, and after argument of counsel, the complainant confesses the demurrer, and leave is granted it to amend the bill by July twentieth, A. D. 1875.

And afterwards, and on, to wit, the 15th day of December, A. D. 1876, came the United States of America, by W. H. Parker, esq., acting district attorney, and filed in said court certain paper writings heretofore filed (as appears by the file-mark thereon of the clerk of said court) in the district court of the third judicial district of the Territory of Colorado, sitting for the trial of causes arising under the laws of the United States, and in a certain cause in the said district court lately pending, wherein the United States of America was complainant and Irving W. Stanton and others were defendants, and the said paper writings so heretofore filed in the said district court are entitled as follows:

Complainant's bill to compel surrender of land patent, &c.
Chancery subpœna, issued June 10th, A. D. 1874.
Demurrer of Charles A. Cook.
Demurrer of David H. Moffat, jr.
Demurrer of Irving W. Stanton.
Precipe for discontinuance as to some of the defendants.
Amended bill of complaint.
Demurrer of Moffat, jr., to amended bill.
Demurrer of Stanton and Cook to amended bill.
Chancery subpœna, issued Feb. 22nd, A. D. 1876.
Exceptions for impertinence to answer of Moffat, jr.
Exceptions for impertinence to answer of Stanton and Cook.
Exceptions for insufficiency to answer of Moffat, jr.
Exceptions for insufficiency to answer of Stanton and Cook.

And the said complainant's bill of complaint is in words and
3 figures as follows, to wit:

Complainant's bill to compel surrender of land patent, &c.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district, in the Territory of Colorado, sitting for the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado.

To the honorable Moses Hallett, chief justice of the supreme court of Colorado and judge of the third judicial district of Colorado Territory, in chancery sitting:

Humbly informing, showeth unto your honor, your orator, the United States of America, at the instances of the honorable Everett C. Banfield, Solicitor of the Treasury of the United States of America, makes this information and brings this bill against Irving W. Stanton, of Pueblo, Territory of Colorado, Charles A. Cook, of Pueblo, Territory of Colorado, David H. Moffat, jr., of Denver, Territory of Colorado, Robert E. Carr, trustee, of St. Louis, State of Missouri, Philip Quinlen, and Henry H. Perry, Michael Quinlan, and Orvin R. Peasley, and therefore your orator complains and says that your orator acquired the absolute ownership of one hundred and sixty-two and $\frac{56}{100}$ acres of land in lots 1 and 2 and north half of southeast number three, of township number twenty-three

south, of range fifty-two west, in the county of Bent, in the third judicial district of Colorado Territory, of which your orator was and is the
4 absolute owner, and which said land is subject to the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4, 1841. For the said described lands, belonging to your orator, a patent was fraudulently obtained from your orator, and inadvertently and by mistake issued by your orator in the name of Philip Quinlan, after the filing of a declaratory statement in the land office at Pueblo, and upon proof of right of pre-emption, purporting to have been made by the said Philip Quinlan, and filed in the said land office on the eighth day of May, 1873, which said proof of right of pre-emption sets forth that Philip Quinlen appeared before Irving W. Stanton, register, the said Irving W. Stanton being then a register of the land office at Pueblo, on the said eighth day of May, 1873, and solemnly swore and subscribed to an affidavit that the said Philip Quinlan had made settlement upon and improved the aforesaid land in good faith to appropriate it to his exclusive use and benefit, and not for the purpose of sale or speculation, and that he had not, directly or indirectly, made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which he might acquire from your orator would inure in whole or in part to the benefit of any person except himself. The said proof of right of pre-emption further sets forth that Michael Quinlan and Orvin R. Peasley appeared on the same day before the said Irving W. Stanton, then a register at the land office at Pueblo, and solemnly swore and made their affidavit that the said Philip Quinlen was then an
5 inhabitant of the said tract of land; that no other person resided upon it entitled to the right of pre-emption; that the said Philip Quinlan entered upon the said land and made a settlement in person on the fifth day of May, 1872; that he built a house and made other improvements on the said land; that he lived in the said house and made it his exclusive home from the fifteenth day of May, 1872, to the date of making said oath and subscribing said affidavit; that he did not remove from his own lands within the Territory of Colorado to make the said settlement; and that he has since plowed, fenced, and cultivated about eighteen acres of said land; whereas, in truth and in fact, your orator complains and says that no settlement or improvements whatever were then or ever made by the said Philip Quinlan on said land.

And your orator further complains and says that the said allegations contained in the said oaths and affidavits are utterly false, fictitious, and fraudulent, by reason of which false oaths and affidavits your orator was misinformed, misled, and defrauded.

Your orator further complains and says that Irving W. Stanton, then a register of the land office at Pueblo, and Charles A. Cook, then a receiver of public moneys for the district of lands, subject to sale in the Arkansas Valley land district at Pueblo, did on the eighth day of May, 1873, certify on paper, that the said Michael Quinlan and Orvin R. Peasley, were persons of respectability, without any personal or official knowledge, by either of them, upon the subject.

Your orator further complains, and says that the said patent was issued by your orator inadvertently and by mistake to a fictitious person, through

and by means of false and fraudulent representations, as set forth in
6 the said declaratory statement and the said proof of right of pre-
emption, and that the said patent was issued in the name of Philip Quinlan; whereas, in truth and in fact, no such person has or ever had any existence in the county of Bent or within the jurisdiction of this court.

And your orator further complains, and says that the several transfers of the said tract of land were made previous to the date of the said patent, and that the records of the county of Bent show that the said Philip Quinlan conveyed the said tract of land to one Henry H. Perry on the 12th day of May, 1873, and that the said Henry H. Perry conveyed the said tract of land to David H. Moffat, jr., on the 23d day of June, 1873, and that the said David H. Moffat, jr., transferred and conveyed an undivided one-half interest in and of said tract of land to Robert E. Carr, trustee, on the fifteenth day of September, 1873, and it appears to your orator that the title thus conveyed was acquired through the said patent, and that all of said transfers and conveyances were made & completed in the said county before the date of the said patent, which was granted on the fourth day of October, 1873, in the name of the said Philip Quinlan, and that each of the said purchasers of said lands had previous and full notice of the frauds committed in obtaining the said patent, and made their respective purchases with full knowledge on their part of the fraudulent means used in procuring the said patent. And your orator well hoped that no dispute would have arisen touching the surrender and cancellation of the said patent, but that the said defendants would have complied with the reasonable request of your orator, as in conscience and equity they ought to have
done. But now, so it is, may it please your honor, that the
7 said Irving W. Stanton, then register as aforesaid, and Charles A. Cook, then receiver as aforesaid, combining and confederating together, and with David H. Moffat, jr., Robert E. Carr, trustee, Philip Quinlan, Henry H. Perry, Michael Quinlan, and Orvin R. Peasley, together with divers other persons as yet to your orator, unknown, but whose names when discovered your orator prays may be inserted herein with apt words to charge them as parties defendants hereto; and contriving how to injure, wrong, and oppress your orator in the premises, the said confederates respectively do now absolutely refuse to comply with such request, sometimes pretending that the said declaratory statement was regular, and that the said proof of right of pre-emption was in strict conformity with the statutes regulating it, and that the said patent was regularly and lawfully obtained, and that after passing out of the hands of the original holder, your orator is precluded from legally pursuing the said defendants, and has no claim upon them for the surrender of the said patent, to the end that the same may be annulled and cancelled. And the said defendants at other times allege and pretend that the said patent is now beyond the right and control of your orator, that it was transferred to purchasers who had no notice or knowledge whatever of the fraudulent means used and resorted to for its issue and possession, and that it is a good and valid conveyance of the said lands in the hands of an innocent purchaser. Whereas, your orator charges the contrary thereof to be the truth, and that the fraud practiced vitiates the patent, and that it was irregularly and unlawfully procured and issued by reason of false and fraudulent

8 means and devices. All of which actings, doings, and pretences of the said defendants were contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator in the premises.

In consideration whereof, and forasmuch as your orator is entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this character are properly cognizable: To the end thereof that the said Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., Robert E. Carr, trustee, Philip Quinlan, Henry H. Perry, Michael Quinlan, and Orvin R. Peasley, and the rest of the confederates, when discovered, may respectively, full, true, direct, and perfect answers make, upon their respective corporal oaths, according to the best of their respective knowledge, information, and belief, to all and singular the matters and charges aforesaid, and that as fully and particularly in every respect as if the same were here again repeated and they hereunto particularly interrogated; and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several respective information, hearsay, and belief, and more especially that they may each answer, discover, and set forth under oath, their respective knowledge, remembrance, information, and belief of the said declaratory statement, by whom made, and their full knowledge, remembrance, information, and belief of the said proof of right of pre-emption, by whom made, and at whose instance the same was made, who signed the affidavits, and by whom, if by any person or persons, the said oaths were taken, and particularly by whom the said con-

9 spiracy was concocted, a detailed account of its inception, its progress, with the full names of all of the parties connected therewith; the manner in which the said confederacy was carried out, by whom the inchoate title under the said proof of right of pre-emption was held, by whom it was transferred, by whom the subsequent transfers were made, what notice the purchaser had, previous to the transfers, of the frauds used in procuring the said patent, and at whose instance the said conveyances were made; who is the present possessor of the said patent, and by what means he became possessed of it, and what knowledge he had of the means used to procure and secure the said patent, and the reason why the title to the said land became transferred and conveyed to the present holder, previous to the date of the patent, with full knowledge of the frauds practised, by means of which the said patent was obtained from your orator, and the full names of all the parties to the said fraud; and to name good reasons why the said patent should not be surrendered for annulment, vacation, and cancellation, and that they may, if they can, show why your orator should not have the relief hereby prayed.

And that the said defendants may surrender, and be require by a decreed in chancery to surrender, the said patent for annulment, vacation, and cancellation, to which your orator is justly and equitably entitled; and that your orator may have such further and other relief in the premises as the nature of the case may require and to your honor may seem meet and agreeable to equity and good conscience, may it please your honor to grant unto your orator the writ of chancery summons of the

10 United States of America, arising out of and under the seal of this honorable court, to be made returnable according to law, and directed

to the said Irving W. Stanton, Charles A. Cook, David H. Moffatt, jr., Philip Quinlan, Henry W. Perry, Michael Quinlan, and Orvin R. Peasley, whereby the said defendants, and the rest of the confederates, when discovered, may be summoned, and thereby commanding them and every one of them, at a certain day and under a certain penalty, therein to be inserted, to be and appear before your honor in this honorable court on a certain day, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honor, as the judge of and holding said court, may make and shall seem meet, and as shall seem agreeable to equity and good conscience. And your orator will ever pray, &c.

H. C. ALLEMAN,
Attorney of the United States for Colorado Territory and Complainant's Solicitor.

(Endorsed:) First judicial district of Colorado. No. 289. June term, 1874. United States of America vs. Irving W. Stanton, Charles A. Cook, David H. Maffatt, jr., Robert E. Carr, trustee, Philip Quinlan, Henry H. Perry, Michael Quinlan, Orvin R. Peasley. In chancery. Complainant's bill to compel surrender of a land patent for vacation and cancellation. Filed June third, 1874. (Signed) George A. Bute, clerk. H. C. Alleman, attorney of the United States for Colorado and plaintiff's solicitor.

And the said chancery subpœna issued June 10th, A. D., 1874, is in words and figures as follows, to wit:

11 *Chancery subpœna.*

(C. D., N. 289.)

The President of the United States of America to Irving W. Stanton, of Pueblo, Colorado; Charles A. Cook, of Pueblo, Col.; David H. Moffat, jr., of Denver, Col.; Robert E. Carr, trustee, of St. Louis, Missouri; Philip Quinlen, Henry H. Perry, Michael Quinlen, O. R. Peasley, greeting:

You are hereby commanded that you and each of you personally appear before the judge of the district court of the United States of America for the third judicial district of Colorado Territory, in equity, on the first Monday (it being the sixth day) of July, A. D. 1874, wheresoever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by the United States of America, and to do further and receive what the said court shall consider in that behalf; and this you are not to omit under the penalty prescribed by law.

SEAL OF THE DISTRICT COURT OF COLORADO TERRITORY, THIRD JUDICIAL DISTRICT.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Pueblo, on the tenth day of June, A. D. one thousand eight hundred and seventy-four.

(Signed) GEORGE A. BUTE, *Clerk.*

Complainant's solicitor, H. C. Alleman, esqr.

Marshal's return.

(Endorsed:) The within subpœna served on the defendants Charles A. Cook and David H. Moffat, jr., on the fifteenth day of June, A. D. 1874, by delivering to and leaving with them a copy thereof, and at the same time showing them this original with the seal of the court attached.

12 The remainder of the defendants not found within my district after due and diligent search.

(Signed) M. A. SHAFFENBURG,
U. S. Marshal,
By W. H. SALISBURY, *Dp'y.*

(Indorsed:) United States of America. Colorado Territory, third judicial district. G. D., No. 289. To the term, A. D. 187 . The United States of America, complainant, vs. Irving W. Stanton et al., defendants.

The defendants are required to enter appearance in the above cause in the clerk's office of this court, on or before the first Monday of July, A. D. 1874, or the bill will be taken pro confesso against them.

(Signed) GEORGE A. BUTE, *Clerk.*

Returned and filed , clerk. , complainant's solicitor.

And the said demurrer of Charles A. Cook is in words and figures as follows, to wit:

Demurrer of Charles A. Cook.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district, in the Territory of Colorado, sitting for the transaction of business and the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado, in chancery of August rule day, A. D. 1874.

IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFAT, jr., Robt. E. Carr, trustee; Philip Quinlan, Henry H. Perry, Michael Quinlan & Orvin R. Peasley,
ats.
UNITED STATES OF AMERICA. } Demurrer in chancery.

The demurrer of Charles A. Cook, one of the above-named defendants, to the bill of complaint of the United States of America, complainant.

13 This defendant, by protestation, not acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs thereto, and for cause of demurrer says that it appears by the said complainant's own showing by its said bill of complaint that the said complainant is not entitled to the discovery or relief prayed by its said bill against this defendant. And for special causes of demurrer to said bill this defendant shows to the court here:

First. There is no privity shown between the said Cook and the alleged pre-emptor.

Second. Equity does not reach fraud that is of a penal nature.

Third. There is no offer on the part of the complainant to do equity; i. e., to return the money received by the complainant for the land in said bill described.

Fourth. It is simply averred that a patent issued for the land, but the patent is not set forth in the bill according to its legal effect, nor yet appended to the bill as an exhibit. Patents differ, or may differ, and the court is not to presume by the use of the word "patent" that the complainant conveyed the land in fee.

Fifth. The patent is alleged to have issued "in the name of Philip Quinlan," the pre-emptor; i. e., the pre-emptor is the grantor, Quinlan being but an alias for the complainant.

Sixth. It is alleged that Quinlan, the pre-emptor, is a fictitious person. It is not alleged that any person personated the fictitious person. Yet the alleged myth is sued and process and decree prayed for against him, which is an absurdity.

Seventh. Neither the citizenship of this defendant nor of any
14 of the other defendants in said cause is given in said bill as required by U. S. Supreme Court equity rules.

Eighth. The conveyance from the said Perry to Moffat is not set forth with circumstance and precision—whether by livery of seizin, or by deed, or otherwise. It is not set forth according to legal effect or otherwise, either in the bill or as an exhibit.

Ninth. The conveyance is not stated with precision, consideration, and other circumstances, and matter of detail are not given.

Tenth. The complainant alleges "that the several transfers of said tract of land were made previous to the date of said patent," without first averring that the land had ever been transferred.

Eleventh. It is charged that the several purchasers had notice of the "frauds" committed—not that they had notice of facts from which the court could presume or find a fraud—that the purchases were made with a full knowledge of the "fraudulent means used in procuring said patent," which is one of the facts to be found by the court.

Twelfth. This defendant is charged with refusing to comply with the requests of the complainant, but the complainant fails to set forth any request whatsoever. The request is an important and an essential part of the bill, for the defendant should have an opportunity to do justice before being sued.

Thirteenth. There is no averment that the defendants or either of them claim to own this land, or have any interest therein or right thereto, or that said transfers and patent are yet in force or valid or effectual, for
15 any purpose. This allegation is essential, especially as it is nowhere averred that the complainant requested the defendants or either of them to reconvey, or otherwise comply with any specific demand of the complainant.

Fourteenth. The special prayer is vague, uncertain, and meaningless; it is that "the said defendants may surrender and be required by a decree in chancery to surrender the said patent for annulment, vacation, and cancellation," not that the title obtained through and by the patent and subsequent transfers be decreed null and void.

Fifteenth. The defendants are required, contrary to the rules of equity, to answer according to "hearsay," as well as to knowledge, &c.

Sixteenth. It is not averred and charged to be the fact that Philip Quinlan, the pre-emptor, made a conveyance to any one of the land in question.

Seventeenth. The bill filed herein is not sworn to, as by rules of equity practice required.

Eighteenth. Said bill does not have "the signature of counsel annexed to it," as by U. S. Supreme Court rule in equity required, but merely his printed name.

Nineteenth. The interrogatories contained in the interrogating part of the bill are not divided from each other, and numbered consecutively 1, 2, 3, &c., nor are the interrogatories which each defendant is required to answer specified in a note at the foot of the bill, as required by No. 41 of U. S. Supreme Court rules in equity.

16 Twentieth. The words of the bill preceding the interrogating part thereof, and beginning with the words "To the end therefore," do not comply with the requirements of No. 43 of U. S. Supreme Court rules in equity, nor does the general frame of the bill throughout comply with said rules.

Twenty-first. It appears by said bill that the same is exhibited against this defendant and the said Stanton, Moffatt, Carr, Philip Quinlan, Michael Quinlan, Perry, and Peasley, for several and distinct matters and causes, in many whereof, as appears by the said bill, this defendant is not in any manner interested or concerned; by reason of which distinct matters the said complainant's said bill is drawn out to a considerable length, and this defendant compelled to take a copy of the whole thereof; and by joining distinct matters together, which do not depend on each other in said bill, the pleadings, orders, and proceedings will in the progress of said suit be intricate and prolix, and this defendant be put to unnecessary charges in taking copies of the same, although several parts in no way relate to or concern him.

Twenty-second. That so much of said bill as is written is so illegible and abominably obscure as to names and dates that the same cannot be deciphered or determined with certainty by said defendant or his solicitors.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complainant, said defendant demurs to the said bill and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any

17 further or other answer to the said bill, and he pray' to be hence dismissed with his reasonable costs in this behalf sustained.

We certify that in our opinion the foregoing demurrer of Charles A. Cook, defendant, to the bill of complaint of the United States of America, complainant, is well founded in law, and proper to be filed in the above cause.

(Signed) SAYRE, WRIGHT & BUTLER, &
H. C. FLETCHER,
WILBUR F. STONE,
Solicitors, and of counsel of Defendant.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

Charles A. Cook, being duly sworn, deposes and says that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

(Signed) CHAS. A. COOK.

Subscribed and sworn to before me this third day of August, A. D. 1874.

(Signed) MARK G. BRADFORD,
United States Commissioner.

(Endorsed:) No. 289. June term, A. D. 1874. Irving W. Stanton, Chas. A. Cook, David H. Moffat, jr., Philip Quinlan, et al., ats. The U. S. of America. In chancery. Demurrer of Chas. A. Cook. Filed August 3d, 1874. (Signed) George A. Bute, cl'rk.

And the said demurrer of David H. Moffat, jr., is in words and figures as follows, to wit:

Demurrer of David H. Moffat, jr.

18 UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District County of Pueblo, ss:

In the district court of the third judicial district, in the Territory of Colorado, sitting for the transaction of business and the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado. In chancery. Of August rule day, A. D. 1874.

IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., Robert E. Carr, trustee, Philip Quinlan, Michael Quinlan, Orrin R. Peasley, and Henry H. Perry *ats.* UNITED STATES OF AMERICA.	Demurrer in chancery.

The demurrer of David H. Moffat, Jr., one of the above-named defendants to the bill of complainant of the United States of America, complainant.

This defendant, by protestation, not acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs thereto, and for cause of demurrer says that it appears by the said complainant's own showing by its said bill of complaint that the said complainant is not entitled to the discovery or relief prayed by its said bill against this defendant. And for special causes of demurrer to said bill this defendant show to the court here:

First. There is no privity shown between the said Moffat and the alleged pre-emptor. The transfer to Moffat is from another person.

Second. Equity does not reach fraud that is of a penal nature.

19 Third. There is no offer on the part of the complainant to do equity; i. e., to return the money received by the complainant for the land in said bill described.

Fourth. It is simply averred that a patent issued for the land, but the patent is not set forth in the bill according to its legal effect, nor yet appended to the bill as an exhibit. Patents differ, or may differ, and the court is not to presume by the use of the word "patent" that the complainant conveyed the land in fee.

Fifth. The patent is alleged to have issued "in the name of Philip Quinlin," the pre-emptor; i. e., the pre-emptor, is the grantor, Philip Quinlin being but an alias for the complainant.

Sixth. It is alleged that Philip Quinlin, the pre-emptor is a fictitious person. It is not alleged that any person personated the fictitious person. Yet the alleged myth is sued and process and decree prayed for against him; which is an absurdity.

Seventh. Neither the citizenship of this defendant nor of any of the other defendants in said cause is given in said bill, as required by U. S. Supreme Court equity rules.

Eighth. The conveyance from the said Henry H. Perry to Moffat is not set forth with circumstance and precision, whether by livery of seisin, or by deed, or otherwise. It is not set forth according to legal effect, or otherwise, either in the bill or as an exhibit.

Ninth. The nature of the deed executed by Perry to Moffat is not stated with certainty; consideration and other circumstances and matter of detail are not given.

Tenth. The complainant alleges "that the several transfers of said tract of land were made previous to the date of said patent," without first averring that the land had ever been transferred.

20 Eleventh. It is charged that the several purchasers had notice of the "frauds" committed, not that they had notice of facts from which the court could presume or find a fraud; that the purchases were made with a full knowledge of the "fraudulent means used in procuring said patent," which is one of the facts to be found by the court.

Twelfth. This defendant is charged with refusing to comply with the requests of the complainant, but the complainant fails to set forth any request whatsoever. The request is an important and an essential part of the bill, for the defendant should have an opportunity to do justice before being sued.

Thirteenth. There is no averment that the defendants or either of them claim to own this land, or have any interest therein or right thereto, or that said transfers and patent are yet in force or valid or effectual for any purpose. This allegation is essential, especially as it is nowhere averred that the complainant requested the defendants or either of them to reconvey or otherwise comply with any specific demand of the complainant.

Fourteenth. The special prayer is vague, uncertain, and meaningless; it is that "the said defendants may surrender, and be required by a decree in chancery to surrender, the said patent for annulment, vacation, and cancellation," not that the title obtained through and by the patent and subsequent transfers be decreed null and void.

Fifteenth. The defendants are required contrary to the rules of equity, to answer according to "hearsay" as well as to knowledge, &c.

21 Sixteenth. It is not averred and charged to be the fact that Philip Quinlin, the pre-emptor, made a conveyance to any one, but simply that *that* the records of Bent County so show.

Seventeenth. The bill filed herein is not sworn to as by rules of equity practice required.

Eighteenth. Said bill does not have "the signiture of counsel annexed to it" as by U. S. Supreme Court rule in equity required, but merely his printed name.

Nineteenth. The interrogatories contained in the interrogating part of the bill are not divided from each other and numbered consecutively 1, 2, 3, &c., nor are the interrogatories which each defendant is required to answer specified in a note at the foot of the bill, as required by No. 41 of U. S. Supreme Court rules in equity.

Twentieth. The words of the bill preceding the interrogating part thereof, and beginning with the words "To the end, therefore," do not comply with the requirements of No. 43 of U. S. Supreme Court rules in equity, nor does the general frame of the bill throughout comply with said rules.

Twenty-first. It appears by said bill that the same is exhibited against this defendant and Irving W. Stanton, Charles A. Cook, Robert E. Carr, trustee, Philip Quinlin, Henry H. Perry, Michael Quinlin, and Orrin R. Peasley, for several and distinct matters and causes; in many whereof, as appears by the said bill, this defendant is not in any manner interested or concerned; by reason of which distinct matters the said complainant's said bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof, and by joining distinct matters together, which do not depend on each other in said bill, the plead-

22 ings, orders, and proceedings will, in the progress of said suit, be intricate and prolix, and this defendant be put to unnecessary charges in taking copies of the same, although several parts in no way relate to or concern him.

Twenty-second. So much of said bill as is in writing is, as to names and dates, illegible.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complainant, said defendant demurs to the said bill and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

We certify that in our opinion the foregoing demurrer of David H. Moffat, one of defendants to the bill of complaint of the United States of America, complainant, is well founded in law, and proper to be filed in the above cause.

(Signed) SAYRE, WRIGHT & BUTLER.
(Signed) W. F. STONE & H. C. THATCHER,
Solicitors, and of Counsel for Defendant.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

David H. Moffat, jr., being duly sworn, deposes and says that he has

read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

(Signed) DAVID H. MOFFAT, JR.

Subscribed and sworn to before me this third day of August, A. D. 1874.

(Signed) MARK G. BRADFORD,
United States Commissioner.

(Endorsed:) No. 289. June term, 1874. Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., Robert E. Carr, Philip Quinlin, et al., ats. United States of America. Demurrer of David H. Moffat, jr. In chancery. Filed August 3d, 1874. (Signed) George A. Bute, cl'rk.

23 And the said demurrer of Irving W. Stanton is in words and figures as follows, to wit:

Demurrer of Irving W. Stanton.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district in the Territory of Colorado, sitting for the transaction of business and the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado. In chancery. Of August rule day, A. D. 1874.

IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., Rob't E. Carr, trustee, Philip Quinlan, Henry H. Perry, Michael Quinlan, Orrin R. Peasley *ats.* UNITED STATES OF AMERICA.	Demurrer in chancery.

The demurrer of Irving W. Stanton, one of the above-named defendants, to the bill of complaint of the United States of America, complainant:

This defendant, by protestation, not acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs thereto, and for cause of demurrer says that it appears by the said complainant's own showing, by its said bill of complaint, that the said complainant is not entitled to the discovery or relief prayed by its said bill against this defendant. And for special causes of demurrer to said bill this defendant shows to the court here:

First. There is no privity shown between the said Moffat and the alleged pre-emptor. The transfer to Moffat is from another person.

Second. Equity does not reach fraud that is of a penal nature.

24 Third. There is no offer on the part of the complainant to do equity; i. e., to return the money received by the complainant for the land in said bill described.

Fourth. It is simply averred that a patent issued for the land, but the patent is not set forth in the bill according to its legal effect, nor yet appended to the bill as an exhibit. Patents differ, or may differ, and the court is not to presume by the use of the word "patent" that the complainant conveyed the land in fee.

Fifth. The patent is alleged to have issued "in the name of Philip Quinlan," the pre-emptor; i. e., the pre-emptor is the grantor, Quinlan being but an alias for the complainant.

Sixth. It is alleged that Quinlan, the pre-emptor, is a fictitious person. It is not alleged that any person personated the fictitious person. Yet the alleged myth is sued and process and decree prayed for against him, which is an absurdity.

Seventh. Neither the citizenship of this defendant nor of any of the other defendants in said cause is given in said bill, as required by U. S. Supreme Court equity rules.

Eighth. The conveyance from the said Perry to Moffat is not set forth with circumstance and precision, whether by livery of seisin, or by deed, or otherwise. It is not set forth according to legal effect or otherwise, either in the bill or as an exhibit.

Ninth. The conveyance is not stated with precision. Consideration and other circumstances and matter of detail are not given.

25 Tenth. The complainant alleges "that the several transfers of said tract of land were made previous to the date of the said patent," without first averring that the land had ever been transferred.

Eleventh. It is charged that the several purchasers had notice of the "frauds" committed—not that they had notice of facts from which the court could presume or find a fraud; that the purchases were made with a full knowledge of the "fraudulent means used in procuring said patent," which is one of the facts to be found by the court.

Twelfth. The defendants are charged with refusing to comply with the requests of the complainant, but the complainant fails to set forth any request whatsoever. The request is an important and an essential part of the bill, for the defendant should have an opportunity to do justice before being sued.

Thirteenth. There is no averment that the defendants or either of them claim to own this land or have any interest therein, or right thereto, or that said transfers and patent are yet in force, or valid or effectual for any purpose. This allegation is essential, especially as it is nowhere averred that the complainant requested the defendants, or either of them, to reconvey or otherwise comply with any specific demand of the complainant.

Fourteenth. The special prayer is vague, uncertain, and meaningless; it is that "the said defendants may surrender, and be required by

26 a decree in chancery to surrender, the said patent for annulment, vacation, and cancellation," not that the title obtained through and by the patent and subsequent transfers be decreed null and void.

Fifteenth. The defendants are required, contrary to the rule of equity, to answer according to hearsay as well as to knowledge, &c.

Sixteenth. It is not averred and charged to be the fact that Philip Quinlan, the pre-emptor, made a conveyance to any one of the land in question.

Seventeenth. The bill filed herein is not sworn to as by rules of equity practice required.

Eighteenth. Said bill does not have "the signature of counsel annexed to it," as by U. S. Supreme Court rule in equity required, but merely his printed name.

Nineteenth. The interrogatories contained in the interrogating part of the bill are not divided from each other and numbered consecutively 1, 2, 3, &c., nor are the interrogatories which each defendant is required to answer specified in a note at the foot of the bill, as required by No. 41 of U. S. Supreme Court rules in equity.

Twentieth. The words of the bill preceding the interrogating part thereof, and beginning with the words "To the end, therefore," do not comply with the requirements of No. 43 of the U. S. Supreme Court rules in equity, nor does the general frame of the bill throughout comply with said rule.

27 Twenty-first. It appears by said bill that the same is exhibited against this defendant and the said Cook, Moffat, Carr, Philip Quinlan, Michael Quinlan, Berry, & Peasley, for several and distinct matters and causes; in many whereof, as appears by the said bill, this defendant is not in any manner interested and concerned; by reason of which distinct matters the said complainant's said bill is drawn out to a considerable length, and this defendant compelled to take a copy of the whole thereof, and by joining distinct matters together, which do not depend on each other in said bill, the pleadings, orders, and proceedings will, in the progress of said suit, be intricate and prolix, and this defendant be put to unnecessary charges in taking copies of the same, although several parts in no way relate to or concern him.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complainant, said defendant demurs to the said bill and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill; and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

We certify that in our opinion the foregoing demurrer of Irving W. Stanton, defendant, to the bill of complaint of the United States of
28 America, complainant, is well founded in law, and proper to be filed in the above cause.

(Signed) SAYER, WRIGHT & BUTLER, &
(Signed) H. C. THATCHER & WILBUR F. STONE,
Solicitors, and of Counsel for Defendant.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss':

Irving W. Stanton, being duly sworn, deposes and says that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

(Signed) IRVING W. STANTON.

Subscribed and sworn to before me this third day of August, A. D. 1874.

(Endorsed:) No. 289. June term, D. 1874. Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., Philip Quinlan, et al., ats. The U. S. of America. In chancery. Demurrer of Irving W. Stanton. Filed August 3d, 1874. (Signed) George A. Bute, clerk.

29 And the said precipe for discontinuance as to some of the defendants is in words and figures as follows, to wit:

Precipe for discontinuance as to some of defendants.

In the district court of the third judicial district of Colorado Territory, sitting at Pueblo, for the trial and adjudication of causes arising under the Constitution and laws of the United States, in and for the body of the third judicial district of Colorado Territory. In chancery sitting.

UNITED STATES OF AMERICA *vs.* IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFATT, jr., Robert E. Carr, trustee, Philip Quinlan, Henry H. Perry, Michael Quinlan, and Orien R. Peasley.	G. D. No. 289. Bill in equity.

And now, to wit, July 17th, A. D. 1875, comes H. C. Alleman, attorney of the United States for Colorado Territory, and complainant's solicitor, and directs a judgment of discontinuance to be entered in the above case, so far only, however, as relates to Philip Quinlan, Henry H. Perry, Michael Quinlan, and Orien R. Peasley, but the bill to remain, so far as the other defendants named herein are concerned, against the other defendants.

(Signed) H. C. ALLEMAN,
Attorney of the United States for Colorado Territory,
30 *and Complainant's Solicitor.*

To GEORGE A. BUTE, Esqr.,
Clerk of the District Court,
Third Judicial District, Pueblo, Colorado.

(Endorsed:) No. 289, G. D. Third judicial district of Colorado Territory. United States of America vs. Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., Robert E. Carr, trustee, Philip Quinlan, Henry H. Perry, Michael Quinlan, & Orien R. Peasley. In equity. Judgment of discontinuance as to some of the defendants. Filed July 19th, 1875. (Signed) George A. Bute, clerk. H. C. Alleman, attorney of the United States for Colorado, and complainant's solicitor.

And the said amended bill is in words and figures as follows, to wit:

Amended bill.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district in the Territory of Colorado, sitting for the trial of the causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and

31 for the body of the third judicial district of Colorado Territory. In chancery. To December term, A. D. 1875.

UNITED STATES OF AMERICA
vs.
IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., and Robert E. Carr, trustee.
} G. D. No. 289. Amended bill.

To the honorable Moses Hallett, chief justice of the supreme court of Colorado and judge of the third judicial district of Colorado Territory, in chancery sitting:

Humbly informing, showeth unto your honor, your orator, the United States of America, at the instance of the honorable Everett C. Banfield, Solicitor of the Treasury of the United States of America, makes this information and brings this bill against Irving W. Stanton, a resident of the said third judicial district of Colorado and a citizen of the Territory of Colorado; Charles A. Cook, a resident of the first judicial district of Colorado and a citizen of the Territory of Colorado; David H. Moffat, jr., a resident of the first judicial district of Colorado and a citizen of
32 the Territory of Colorado; and Robert E. Carr, trustee, a resident of the county of St. Louis and a citizen of the State of Missouri.

And, therefore, your orator complains, and says that your orator acquired the absolute ownership, and is the owner in fee-simple, of one hundred and sixty-two and $\frac{50}{100}$ acres of land in the county of Bent, in the said third judicial district of Colorado Territory, described as follows, to wit, comprising lots 1 and 2, and north half of the southeast quarter of section numbered three (3), in township numbered twenty-three (23) south, of range numbered fifty-two (52) west of the sixth principal meridian, situated, lying, and being in the county of Bent, in the third judicial district of Colorado Territory, and within the jurisdiction of this court, of which your orator was and is the absolute owner in fee-simple, and which said land is subject to the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4, 1841. And your orator further shows unto your honor that some person to your orator at present unknown, but whose name when discovered your orator prays leave to insert herein, with apt words to
33 charge him as a party defendant hereto, appeared before one of the officers at the United States land-office at Pueblo, in the said judicial district, and personated Philip Quinlan, who is a fictitious person, as hereinafter stated, and made and filed a declaratory statement in writing, describing the above land and declaring the intention of said Philip Quinlan to claim the same under the provisions of the said act of Congress; and that the said person, to your orator unknown, did also appear before Irving W. Stanton, then register of the United States land office at the United States land office at Pueblo, in the said judicial district, on the eighth day of May, A. D. 1873, and personate the said fictitious person called Philip Quinlan, and submit his proof of right of said Philip Quinlan to pre-empt said land, and in that name to make and file an affidavit

before the said Irving W. Stanton, then register of the United States land office at Pueblo, wherein such person so personating the said Philip Quinlan deposed that he, the said Philip Quinlan, had made settlement upon and improved the aforesaid land in good faith, to appropriate it to his exclusive use and benefit, and not for the purpose of sale or speculation; and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons
34 whomsoever, by which the title which he might acquire from your orator would inure in whole or in part to the benefit of any person except himself; and that the said person, to your orator unknown, did upon the same day last aforesaid procure one called Michael Quinlan, and one called Orien R. Peasley, to appear before the said Irving W. Stanton, then register of the United States land office at Pueblo, as aforesaid, and make, subscribe, and file an affidavit wherein they, the said alleged Michael Quinlan and the so-called Orien R. Peasley, appear to have deposed and sworn that he, the said Philip Quinlan, was over the age of twenty-one years, and a citizen of the United States, and an inhabitant of the said tract of land; that no other person resided upon it entitled to the right of pre-emption; that the said Philip Quinlan entered upon the said land, and made a settlement in person on the said land since the 4th day of September, 1841, to wit, on the first day of May, 1872; that he built a house and made other improvements on the said land; that he lived in the said house and made it his exclusive home from the fifteenth day of May, 1872, to the date of making said oath and subscribing said affidavit; that he did not remove from his own lands within the Territory of Colorado to make the said settlement; that he has since plowed, fenced,
35 and cultivated about eighteen acres of said land.

And your orator further shows unto your honor that upon the proof so being made of the right of said Philip Quinlan to pre-empt said land, and the forwarding of the same to the General Land Office of your orator, a patent was issued by your orator to or in the name of said fictitious person called Philip Quinlan for the above described land, signed by U. S. Grant, President of the United States of America, by S. D. Williamson, secretary, and by L. K. Lippincott, recorder, of the General Land Office of the United States of America, under the seal of the General Land Office of the United States of America, and purporting to convey to the said fictitious person called Philip Quinlan the above described land in fee-simple, and bearing date the 4th day of October, A. D. 1873.

And your orator further shows unto your honor that, confiding in the truth of the statements so made as aforesaid in the said affidavits and proof, it was induced to and did issue the said patent for the land aforesaid in the name of the said fictitious person called Philip Quinlan, and that your orator was thereby deceived, defrauded, and misled, and in truth and in fact the said Philip Quinlan is a fictitious person; that no such person ever resided upon, improved, inhabited, or occupied the said land, and that the statements so contained in the said affidavits and proof are wholly,
36 utterly, and absolutely false.

Now your orator further shows unto your honor that the said Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., and Robert E. Carr, trustee, did, upon, to wit, the twelfth day of May, A. D. 1873, procure some person to your orator unknown, but who, when discovered, your orator

prays leave to make a party defendant to this bill, with apt words to charge him as such, to personate such fictitious person called Philip Quinlan, and in his name to make and execute a deed of conveyance for the above-described land to a fictitious person called Henry H. Perry; and on, to wit, the twenty-third day of June, A. D. 1873, the said Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., and Robert E. Carr, trustee, did procure some person to your orator unknown, but who, when discovered, your orator prays leave to make a party defendant to this bill, with apt words to charge him as such, to personate a fictitious person called Henry H. Perry, and in his name to make and execute a deed of conveyance for the above-described land to the said David H. Moffat, jr.; and that on, to wit, the fifteenth day of September, A. D. 1873, the said David H. Moffat, jr., did transfer, convey, and deed to the said Robert E. Carr, trustee, a one-half interest of and to the said tract of land, and it appears to your orator that the title thus conveyed was acquired from your
37 orator through the said patent, which said deeds of conveyance were duly recorded in the office of the county clerk and recorder of the county of Bent, in the said third judicial district of Colorado Territory, on the 14th day of November, A. D. 1873, in volume 1, reference thereto being had will more fully and at large appear.

And your orator further shows unto your honor that the said several transfers of the said tract of land were made previous to the issuing of the said patent, which bears date the 4th day of October, A. D. 1873, and that the records of the said county of Bent show that the said patent has been recorded in the office of the county clerk and recorder of deeds for the said county of Bent.

And your orator further shows unto your honor that the said David H. Moffatt, jr., at the time of the pretended conveyance to him from said fictitious person called Henry H. Perry had knowledge and well knew all of the facts and acts of frauds above stated, committed in the procuring the title from your orator for said land, and that the said Henry H. Perry and Philip Quinlan were fictitious persons.

And your orator well hoped that no dispute would have arisen touching the surrender and cancellation of the said patent; but that the said defendants would have complied with the reasonable request of your orator, as in conscience and equity they ought to have done.

38 But now so it is, may it please your honor, that the said Irving W. Stanton, then register of the United States land office at Pueblo, and Charles A. Cook, then a receiver of public moneys for the district of lands subject to sale in the Arkansas Valley land district at Pueblo, David H. Moffatt, jr., and Robert E. Carr, trustee, combining and confederating with the said persons to your orator unknown, but whose names when discovered your orator prays may be inserted herein with apt words to charge them as parties defendants hereto, and contriving how to injure, wrong, and oppress your orator in the premises, now absolutely refuse to comply with such request, sometimes pretending that the said declaratory statement was regular, and that the said proof of right of pre-emption was in strict conformity with the statutes regulating it, and that the said patent was regularly and lawfully obtained, and that after passing out of the hands of the original holder your orator is precluded from legally pursuing the said defendants, and has no claim upon them for the surrender of the said

patent to the end that the same may be annulled and cancelled. And the said defendants at other times allege and pretend that the said patent is now beyond the right and control of your orator; that it was transferred to purchasers who had no notice or knowledge whatever of the fraudulent means used and resorted to for its issue and possession, and
39 that it is a good and valid conveyance of the said lands in the hands of an innocent purchaser.

Whereas your orator charges the contrary thereof to be the truth, and that the fraud practiced vitiates the patent, and that it was irregularly and unlawfully procured and issued by reason of false and fraudulent means and devices.

All of which actings, doings, and pretences of *of* the said defendants were contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator in the premises.

In consideration whereof, and forasmuch as your orator is entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this character are properly cognizable and relievable:

To the end, therefore, that the said defendants, and the rest of the confederates when discovered may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths and according to the best and utmost of their several respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories herein-
40 after numbered and set forth as by the note hereunder written and printed, they are respectively required to answer; that is to say:

I. Whether the said conspiracy embraced other than the defendants herein named, by whom the conspiracy was concocted, the full names of all the parties who participated therein and were connected therewith, the respective parts which each of the conspirators were to take and did take in the inception and progress of the said conspiracy, the manner in which the said conspiracy was carried out, together with all the facts and circumstances connected with the agreement and conspiracy to obtain a patent by fraud from the United States to and for the said tract of land?

II. Whether the said declaratory statement was in fact made by any one; and, if so, by whom, and whether it was not made out and signed by some one connected with the United States land office at Pueblo, or by some one at the dictation or suggestion of some one connected with the said land office?

III. Whether the said proof of right of pre-emption was signed and sworn to by any person or persons as pre-emptor and witnesses; and, if so, by whom, when, and under what circumstances, at whose dictation and at whose suggestion?

IV. Whether the respective oaths purporting to have been ad-
41 ministered to the alleged pre-emptor and alleged witnesses were administered; and, if so, when, by whom, and to whom?

V. Whether the said proof of right of pre-emption was not prepared and signed by some one connected with the United States land office at Pueblo, and whether the alleged pre-emptor and alleged witnesses are not myths, and unknown fictitious persons?

VI. Whether the said declaratory statement and proof of right of pre-

emption, or either of them, were not made out and signed at the instance of the defendants hereto, or of any one of these defendants; and, if so, by which of the defendants or by whom?

VII. Whether you were not cognizant of the frauds used in procuring the said patent; what your knowledge is in reference to the said frauds; what your knowledge is of the means used in securing the said patent, and the full particulars of the said frauds and the means used in obtaining the said patent?

VIII. Whether you did not furnish money, or authorize money to be furnished, for land scrip, agricultural scrip, college scrip, agricultural college scrip, or other means to secure the location of the said tract of land in the name of the alleged pre-emptor?

IX. Whether you did not furnish money, authorize or cause money to be furnished for the payment of the requisite fees to the United States or the receiver of public moneys at Pueblo and register of the United
42 States land office at Pueblo, for the location of the said tract of land, and in payment of the necessary fees on the said proof of right of pre-emption to secure the patent for and to the said tract of land?

X. Whether you did not procure some person or persons to personate the said alleged pre-emptor, and the said alleged witnesses to the said proof of right of pre-emption; and, if so, who the person or persons were, and what knowledge you have of the personation by any one or more of the said alleged pre-emptor and alleged witnesses to the said proof?

XI. Whether you did not authorize the procurement of a person or persons to personate the alleged pre-emptor and alleged witnesses to the said proof of right of pre-emption, and what your full knowledge is of any personation in the premises?

XII. Whether you did not furnish money to honorable Jerome B. Chaffe, when delegate in Congress, to procure the patent to the aforesaid tract of land in the name of the alleged pre-emptor by illegitimate means, or pay him, or cause to be paid to him, money for obtaining the said patent by illegal means?

XIII. Whether you did not furnish money or means to procure the proof of right of pre-emption to the aforesaid tract of land in the name
43 of the aforesaid alleged pre-emptor, and whether you did not pay, or cause to be paid, the necessary fees and costs to locate the said land, and procure a patent therefor, which is now in your possession?

XIV. Whether you did not authorize or cause the said conveyance of the said land to be made, and under what circumstances they were made, and your full knowledge of the making and executing of the said deeds of conveyance and the transfer of the said land and patent to David H. Moffat, jr.?

XV. Whether the said deeds of conveyance were made at the dates purporting their execution, by whom they were respectively made, and at whose instance and by whose authority they, and each of them, were made, with your full knowledge in the premises?

XVI. Whether David H. Moffatt, jr., is not the present holder and possessor of the patent to and for the said land; and, if so, by what means he became possessed of it, and what knowledge he had and has of the means used to procure and secure the said patent, and from whom he obtained possession of the patent to and for the said tract of land?

XVII. Whether David H. Moffat, jr., was not the possessor of the patent to the said tract of land; and, if so, by what means he be-
44 came possessed of it, and what knowledge he had of the means used to procure and secure the aforesaid patent?

XVIII. Whether the said several conveyances of the said tract of land were not made subsequent to the date of the patent, to wit, October 4th, A. D. 1873, and when the said conveyances were made, and where they were made?

XIX. Whether the said deeds of conveyance were acknowledged before anyone authorized to administer oaths; and, if so, before whom and by whom were the said deeds of conveyance executed.

XX. Whether the present title to the said land through an United States patent is not in Davjd H. Moffat, jr.; and, if so, how he became possessed of such title?

XXI. Whether the said patent was not procured through fraudulent representations, by whom the said patent was procured, and your full knowledge of the means used, and the manner of procuring it?

XXII. Whether the said David H. Moffat, jr., was not cognizant of the frauds used, and the illegitimate manner resorted to in procuring the patent to the said land, and what his full knowledge is and was in securing it?

XXIII. Whether the said David H. Moffat, jr., did not direct
45 and cause to be recorded in the county clerk and recorder's office of Bent County, Colorado, the several deeds of conveyance of the said tract of land, and by whom the said deeds of conveyance were sent, and what instructions, if any, were given the said person relative to the recording of the said conveyances?

XXIV. Whether full knowledge of the said conspiracy and of the frauds connected with the procuring of the said patent was not fully known by you, and what your knowledge is of the facts connected therewith?

XXV. Whether any good reason can be given why the said patent should not be surrendered for annulment, vacation, and cancellation?

XXVI. Whether any good reason can be given why the said several deeds of conveyance should not be delivered up for annulment, cancellation, and vacation?

XXVII. Whether any good reason can be given why the relief hereby prayed should not be granted? And that the said defendants may surrender, and be required by a decree in chancery to surrender, the said patent for annulment, vacation, and cancellation, and that the said deeds from the said fictitious persons, called Philip Quinlan and Henry H. Perry, may also be cancelled and declared null and void, to which your orator is justly and equitably entitled, and that your orator may have such
46 further and other relief in the premises as the nature of the case may require and to your honor may seem meet and agreeable to equity and good conscience.

May it please your honor to grant unto your orator the writ of chancery summons of the United States of America, arising out of and under the seal of this honorable court, to be made returnable according to law and directed to the said Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., and Robert E. Carr, trustee, whereby the said defendants and the rest of the confederates when discovered may be summoned, and thereby com-

manding them and every one of them, at a certain day and under a certain penalty therein to be inserted, to be and appear before your honor in this honorable court on a certain day, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honor, as the judge of and holding said court, may make and shall seem meet, and as shall seem agreeable to equity and good conscience. And your orator will ever pray, etc.

(Signed) H. C. ALLEMAN,
Attorney of the United States for Colorado Territory and Complainant's Solicitor.

47 NOTE.—Irving W. Stanton will please answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

Charles A. Cook will please answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

David H. Moffat, jr., will please answer the interrogatories numbered respectively 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

Robert E. Carr, trustee, will please answer the interrogatories numbered respectively 1, 7, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, and 27.

(Signed) H. C. ALLEMAN,
Attorney of the United States for Colorado Territory and Complainant's Solicitor.

(Endorsed:) No. 289. G. D. Third judicial district of Colorado Territory. United States of America vs. Irving W. Stanton, Charles A. Cook, David H. Moffat, jr., and Robert E. Carr, trustee. In chancery. Amended bill of complaint to compel the surrender of a land patent for vacation and cancellation. Filed July 19, 1875. (Signed), George A. Bute, clerk. H. C. Alleman, attorney of the United States for Colorado and complainant's solicitor.

And the said demurrer of Moffat, jr., to the amended bill is in words and figures as follows, to wit:

48 *Demurrer of Moffat, jr., to amended bill.*

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district in the Territory of Colorado, sitting for the transaction of business and the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado. In chancery. Of the December term, A. D. 1875.

IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., *ats.* UNITED STATES OF AMERICA.	Demurrer to amended bill.

The demurrer of David H. Moffat, jr., one of the above-named defendants, to the bill of complaint of the United States of America, complainant.

This defendant by protestation, not acknowledging all or any of
49 the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs thereto, and for cause of demurrer says that it appear by the said complainant's own showing, by its said bill of complaint, that the said complainant is not entitled to the discovery or relief prayed by its said bill against this defendant. And for special causes of demurrer to said bill this defendant shows to the court here:

First. Equity does not reach fraud that is of a penal nature.

Second. There is no offer on the part of the complainant to do equity; i. e., to return the money received by the complainant for the land in said bill described.

Third. It is simply averred that a patent issued for the land, but the patent is not set forth in the bill according to its legal effect, nor yet appended to the bill as an exhibit.

Fourth. The conveyance from the said fictitious person to Moffat is not set forth with circumstance and precision—whether by livery of seisin, or by deed, or otherwise. It is not set forth according to legal effect or otherwise, either in the bill or as an exhibit.

Fifth. The defendants are charged with refusing to comply with the requests of the complainant, but the complainant fails to set forth
50 any request whatsoever.

Sixth. There is no averment that the defendants, or either of them, claim to own this land, or have any interest therein or right thereto, or that said transfers and patent are yet in force or valid or effectual for any purpose.

Seventh. The bill avers that the defendant Moffat, at the time of the conveyance to him from an alleged fictitious person, "well knew of the acts and facts of fraud above stated," not that he had knowledge of any facts or things specifically averred, and from which fraud might be inferred as a matter of law.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, said defendant demurs to the said bill, and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

We certify that in our opinion the foregoing demurrer of David H. Moffat, jr., one of the defendants to the bill of complaint of the
51 United States of America, complainant, is well founded in law and proper to be filed in the above cause.

(Signed) SAYER, WRIGHT & BUTLER,
W. F. STONE, &
(Signed) THATCHER AND GAST,
Solicitor, and of Counsel for Defendant.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

David H. Moffat, jr., being duly sworn, deposes and says that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

(Signed) DAVID H. MOFFAT, JR.

Subscribed and sworn to before me this 24th day of December, A. D. 1875.

(Signed) A. W. BRAZEE,
Associate Justice Sup. Ct. Col. Ter.

(Endorsed:) D. H. Moffat, jr., et al. ats. The United States of America. G. D., 289. Demurrer to amended bill. Filed December 27th, 1875. (Signed) George A. Bute, clerk.

52 And the said demurrer of Stanton and Cook to the amended bill is in words and figures as follows, to wit:

Demurrer of Stanton and Cook to amended bill.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district, in the Territory of Colorado, sitting for the transaction of business and the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado. In chancery. Of the December term, A. D. 1875.

IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFAT, jr., *ats.* UNITED STATES OF AMERICA.	Demurrer to amended bill.

53 The joint demurrer of Irving W. Stanton and Charles A. Cook, two of above-named defendants, to the bill of complaint of the United States of America, complainant.

These defendants by protestation, not acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, demur thereto, and for cause of demurrer say that it appears by the said complainant's own showing, by its said bill of complaint that the said complainant is not entitled to the discovery or relief prayed by its said bill against these defendants. And for special causes of demurrer to said bill these defendants show to the court here:

First. Equity does not reach fraud that is of a penal nature.

Second. There is no offer on the part of the complainant to do equity; i. e., to return the money received by the complainant for the land in said bill described.

Third. It is simply averred that a patent issued for the land, but the

patent is not set forth in the bill according to its legal effect, nor yet appended to the bill as an exhibit.

Fourth. The conveyance from the said fictitious person to Moffat is not set forth with circumstance and precision—whether by livery of seisin, or by deed or otherwise. It is not set forth according to legal effect
54 or otherwise, either in the bill or as an exhibit.

Fifth. The defendants are charged with refusing to comply with the requests of the complainant, but the complainant fails to set forth any request whatsoever.

Sixth. There is no averment that the defendants, or either of them, claim to own this land, or have any interest therein, or right thereto, or that said transfers and patent are yet in force, or valid or effectual for any purpose.

Seventh. The bill avers that the defendant Moffat, at the time of the conveyance to him from an alleged fictitious person, "well knew of the acts and facts of fraud above stated," not that he had knowledge of any facts or things specifically averred, and from which fraud might be inferred as a matter of law.

Eighth. These defendants are not proper parties to the suit, as it does not appear in and by said bill they can in any manner be effected by the decree prayed for.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, said defendants demur to the said bill, and to all the matters and things therein contained, and humbly pray the
55 judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, and they pray to be hence dismissed with their reasonable costs in this behalf sustained.

We certify that in our opinion the foregoing demurrer of Irving W. Stanton and Charles A. Cook, two of the defendants to the bill of complaint of the United States of America, complainant, is well founded in law and proper to be filed in the above cause.

(Signed) SAYRE, WRIGHT AND BUTLER, AND
W. F. STONE,
THATCHER & GAST,
Solicitors, and of Counsel for Defendants.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

Irving W. Stanton, being duly sworn, on oath states in behalf of himself and the said Charles A. Cook that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

(Signed) IRVING W. STANTON.

56 Subscribed and sworn to before me this 27th day of December, A. D. 1875.

(Signed) MOSES HALLETT,
C. J. & Judge, &c.

(Endorsed:) D. H. Moffat, jr., et al. ats. The United States of America. G. D., 289. Demurrer to amended bill. Filed Dec. 27th, 1875. (Signed) George A. Bute, clerk.

And the said chancery subpœna, issued February 22d, 1876, is in word, and figures as follows, to wit:

Chancery subpœna.

The people of the Territory of Colorado to Robert E. Carr, trustee (impleaded with Irving W. Stanton, Charles A. Cook, and David H. Moffat, jr.), greeting:

You are hereby commanded that you personally appear before the judge of the district court of the United States of America for the third judicial district of Colorado Territory, in equity, on the fifteenth day of May, A. D. 1876, wheresoever the said court shall then be, to answer a

{SEAL DISTRICT COURT OF COLORADO TERRITORY, THIRD JUDICIAL DISTRICT, 1861.}

57 bill of complaint exhibited against you in the said court by the United States of America, and to do further and receive what the said court shall consider in that behalf; and this you are not to omit under the penalty prescribed by law.

Witness the honorable Moses Hallett, chief justice of the supreme court of the Territory of Colorado, at the city of Pueblo, on the twenty-second day of February, A. D. one thousand eight hundred and seventy-six.

(Signed) GEORGE A. BUTE, *Clerk.*

Complainant's solicitor, Charles D. Bradley, U. S. attorney; E. P. Jacobson, special counsel.

Marshal's return.

The within subpœna served on the defendant Robert E. Carr on the fourth day of April, A. D. 1876, by delivering to and leaving with him a copy thereof, and at the same time showing him this original with the seal of the court attached.

The defendant not found within my district after due and diligent search.

(Signed) C. C. TOMPKINS,
U. S. Marshal,
Per T. B. McCORMICK, *Deputy.*

58 (Endorsed:) United States of America, Colorado Territory, third judicial district. G. D., No. 289. To the May term, A. D. 1876. The United States of America, complainant, vs. Irving W. Stanton et al., defendants.

The defendants are required to enter appearance in the above cause, in the clerk's office of this court, on or before the first of , A. D. 18 , or the bill will be taken pro confesso against them.

(Signed) GEORGE A. BUTE, *Clerk.*

Returned and filed May 15th, 1876.

(Signed) GEORGE A. BUTE, *Clerk.*

Complainant's Solicitor.

And the said exceptions for impertinence to the answer of D. H. Moffat, jr., are in words and figures as follows, to wit:

Exceptions for impertinence to answer of D. H. Moffat, jr.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the district aforesaid, sitting for the trial of causes arising under the Constitution and laws of the United States in and for the body of said district. Of May term, A. D. 1876.

59 UNITED STATES OF AMERICA, complainant,
vs.
IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFAT, jr., & ROBERT E. CARR, defendants. } In chancery.

Exceptions taken by the complainant to the answer of the defendant David H. Moffat, jr., to the complainant's amended bill of complaint, in this cause, for impertinence:

First. For that the following part of said answer, namely, "And further answering this defendant says that he is informed, and verily believes it to be true, and therefore he states it as a fact, that the person alleged in said bill to have personated an unreal or supposed person in the matter of the pre-emption of said land, and to have made a false affidavit in relation to his right of pre-emption, as well as the said other persons who are charged in said bill by the complainant, to have made false affidavit of and concerning the same matter, have not been nor has any one or more of them been arrested, indicted, or convicted for the fraud, or for the perjury alleged in said bill to have been committed respectively by them, nor has any proceeding been commenced by the said complainant, or by any person in its behalf, for the purpose of bringing the said persons,
60 or any of them, to trial or legal examination for the alleged fraud and crime charged against them, respectively, in the complainant's said bill. Wherefore he insists that the said complainant is not entitled upon its own case to the relief prayed for in said bill," is impertinent.

Second. For that the following part of said answer, namely, "And this defendant, as to the several interrogatories appended to said bill, and which the said complainant calls upon him to answer, saith that he is advised that the said complainant hath not by its own statement in said bill made out such a case as, under the laws relating thereto and the rules and practice of this court, entitles the said complainant to the discovery sought to be obtained by said interrogatories, and that he is not by law bound to answer the same, or any of them. And this defendant submits to the judgment of this court, and insists that by reason of the premises this suit is altogether unnecessary and vexatious; and he claims the same benefit from this answer as if he had pleaded the several matters hereinbefore stated, or any of them, or as if he had demurred to the said bill, or to any part thereof," is impertinent.

In all of which particulars the complainant excepts to the said answer

of the defendant David H. Moffat, jr., as impertinent, and insists
61 that the same ought to be expunged from the said answer.

(Signed) CHARLES D. BRADLEY,
United States Attorney for Colorado.

(Signed) E. P. JACOBSON,
Of Counsel for Complainant.

(Endorsed:) No. 289. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton et al. Exceptions for impertinence to answer of David H. Moffat, jr. Filed May 24th, 1876. (Signed) George A. Bute, clerk.

And the said exceptions for impertinence to the answer of Stanton & Cook are in words and figures as follows, to wit:

Exceptions for impertinence to answer of Stanton and Cook.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the district aforesaid, sitting for the trial of
62 causes arising under the Constitution and laws of the United States, in and for the body of said district, of May term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFAT, jr., and ROBERT E. CARR, defendants. } In chancery.

Exception taken by the complainant to the joint and several answer of the defendants, Irving W. Stanton and Charles A. Cook, to the complainant's amended bill of complaint in this cause for impertinence:

First. For that the following part of said answer, namely, "but inasmuch as these defendants have no knowledge, information, or belief that any fraud was committed in procuring from the said complainant the title to said land, they do not believe, and therefore they deny that the said David H. Moffat, jr., had the knowledge so as aforesaid alleged in said bill to have been by him possessed," is impertinent.

Second. For that the following part of said answer, namely, "And further answering these defendants say that they are informed and verily believe it to be true, and therefore state it as a fact, that the per-
63 son alleged in said bill to have personated an unreal or supposed person in the matter of the pre-emption of said land, and who is alleged to have made a false affidavit in relation to his right of pre-emption, as well as the other persons who are charged in said bill by the complainant to have made a false affidavit of and concerning the same matter have not been, nor has any one or more of them been, arrested, indicted, or convicted for the fraud or for the perjury in said bill alleged to have been committed by them respectively; nor has any proceeding been commenced by the said complainant or by any person in its behalf, for the purpose of bringing the said persons or any of them to trial or legal examination for the alleged fraud and crime charged against them respec-

tively, in the complainant's said bill; wherefore they insist that the said complainant is not entitled upon its own case to the relief prayed in its said bill," is impertinent.

Third. For that the following part of said answer, namely, "these defendants as to the several interrogatories appended to said bill, and which the said complainant calls upon them severally to answer, say that they are advised that the said complainant hath not by its own statement in said bill made out such a case as under the laws relating thereto and the rules and practice of this court, entitles the said complainant to the dis-
64 covery sought to be obtained by said interrogatories, and that they are not by law bound to answer the same," is impertinent.

In all of which particulars the complainant excepts to the said answer of the defendants, Stanton and Cook, as impertinent, and insists that the same ought to be expunged from the said answer.

(Signed) CHARLES D. BRADLEY,
United States Attorney for Colorado.

(Signed) E. P. JACOBSON,
Of Counsel for Complainant.

(Endorsed:) No. 289. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton et al. Exceptions for impertinence to answer of Stanton & Cook. Filed May 24th, 1876. (Signed) George A. Bute, clerk.

And the said exceptions for insufficiency to the answer of David H. Moffat, jr., are in words and figures as follows, to wit:

Exceptions for insufficiency to answer of David H. Moffat, jr.

65 UNITED STATES OF AMERICA,
TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the district aforesaid, sitting for the trial of causes arising under the Constitution and laws of the United States, in and for the body of said district. Of May term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., and Robert E. Carr, defendants. } In chancery.

Exceptions taken by the complainant to the insufficient answer of the defendant, H. Moffat, Jr., to the complainant's amended bill of complaint in this cause:

First. For that so much of said answer as avers, "that he is also informed, and believes it to be true, not being advised to the contrary thereof save by the said complainant's bill of complaint, and, therefore, claims the fact to be, that the said Philip Quinlan, who appears to have been the pre-emptor of said land, was not a fictitious or supposed person, but a real individual, who in person and in his own name, made the said
66 statement and the said affidavit alleged in said bill of complaint to

have been made by said unknown person," is argumentative, evasive, and not directly responsive to the allegations of said bill of complaint.

Second. For that so much of said answer as avers "that this defendant is a stranger to all and singular the matters and things stated in the said declaratory statement, as well as in said affidavits, and has no knowledge of the truth or falsity thereof, and therefore he leaves the said complainant to make such proof of the allegations of the said bill of complainant and concerning the alleged falsity of the said statement and the said affidavits as it may be able to produce; but, believing the contrary of the said allegations to be true, he denies that the said complainant was deceived, defrauded, and misled in the issuance of the said patent, and that the statements contained in the said affidavits and proof of pre-emption are false, either wholly or in part," are inconsistent, contradictory, and not directly responsive to the allegations of said bill of complaint.

Third. For that the defendant, David H. Moffat, jr., has not to the best and utmost of his knowledge, remembrance, information and belief, answered any of the interrogatories propounded to him in the said bill of complaint or discovered the matters sought to be discovered by said interroga-
67 tories in the manner required by the law relating thereto, and the rules and practice of this court.

In all which particulars the complainant excepts to the said answer as evasive, imperfect, and insufficient, and prays that the said defendant may be compelled to put in a full and sufficient to said bill of complaint.

(Signed) CHARLES D. BRADLEY,
United States Attorney for Colorado.

(Signed) E. P. JACOBSON,
Of Counsel for Complainant.

(Endorsed:) No. 289. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton et al. Exceptions for insufficiency to answer of David H. Moffat, jr. Filed May 24th, 1876. (Signed) George A. Bute, clerk.

And the said exceptions for insufficiency to the answer of Irving W. Stanton and Charles A. Cook, are in words and figures as follows to wit:

Exceptions for insufficiency to answer of Stanton and Cook.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

68 In the district court for the district aforesaid, sittting for the trial of causes arising under the Constitution and laws of the United States, in and for the body of said district. Of May term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., and Robert E. Carr, defendants. } In chancery.

Exceptions taken by the complainant to the insufficient joint and several

answer of the defendants, Irving W. Stanton and Charles A. Cook, to the complainant's amended bill of complaint in this cause:

First. That the defendants, Irving W. Stanton and Charles A. Cook, have not, nor has either of them, to the best and utmost of their knowledge, remembrance, information, and belief answered any of the interrogatories propounded to them in the said bill of complaint or discovered the matters sought to be discovered by said interrogatories in manner required by the law relating thereto and rules and practice of this court.

69 In which particular the complainant excepts to the said answer as evasive, imperfect, and insufficient, and prays that the said defendants may be compelled to put in a full and sufficient answer to said bill of complaint.

(Signed) CHARLES D. BRADLEY,
United States Attorney for Colorado.

(Signed) E. P. JACOBSON,
Of Counsel for Complainant.

(Endorsed:) 14. No. 289. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton et al. Exceptions for insufficiency to answer of Stanton & Cook. Filed May 24th, 1876. (Signed) George A. Bute, clerk. Filed in circuit court this 15th day of December, A. D. 1876. (Signed) Edward F. Bishop, clerk.

70 And afterwards, and on, to wit, the 25th day of January, A. D. 1877, and in the said circuit court of the United States, the following order was had and entered of record in said cause, to wit:

Order: Cause dismissed as to Stanton & Cook; Def'ts Moffatt & Carr to plead.

14	THE UNITED STATES *vs.* IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFAT, jr., and ROBERT E. CARR, trustee.	In chancery. To compel surrender of land patent.

At this day comes W. S. Decker, esq., attorney of the United States for the district of Colorado, and the said defendants, by Alfred Sayre, esq., their solicitor, also come.

And thereupon, on motion of the said district attorney of the United States, it is ordered by the court that this cause stand dismissed as to the said defendants, Irving W. Stanton and Charles A. Cook.

And thereupon it is ordered by the court that the said defendants, David H. Moffat, jr., and Robert E. Carr, trustee, plead or answer to the bill of complaint herein on or before Monday, the 5th day of February proximo.

70½ And afterwards, and on, to wit, the seventeenth day of February, A. D. 1877, came the said defendant, David H. Moffat, jr., by Alfred Sayre, esq., his solicitor, and filed in said court and in said cause his separate answer to the amended bill of complaint heretofore filed in the said district court in and for the third judicial district of the Territory of Colorado, on the 15th day of May, A. D. 1876, and the said separate answer of Moffat, jr., is in words and figures as follows, to wit:

Answer of Moffat, jr., to amended bill of complaint.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district in the Territory of Colorado, sitting for the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado Territory. To the May term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
IRVING W. STANTON, CHARLES A. COOK, DAVID H. MOFFAT, jr., and Robert E. Carr, trustee, defendants.
} Answer of David H. Moffat, jr.

The answer of David H. Moffat, jr., one of the defendants, to the amended bill of complaint of the United States of America, complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in
71 the said complainant's said bill of complaint contained, for answer thereunto, or to so much and such part or parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, saith: That he admits that heretofore and before the occurrence of the matters and things in the said bill mentioned and alleged, the said complainant was the absolute owner in fee-simple of the piece or parcel of land in said bill described, and remained such owner up to and until the time the same was pre-empted, on, to wit, the eighth day of May, A. D. 1873.

That he denies that the said complainant now is, at the time of the commencement of this suit was, or since the said pre-emption of said land has been, the owner thereof.

That he denies that the said land now is subject to the right of pre-emption under the provisions of the act of Congress named in said bill.

That he admits that it was subject to such rights of pre-emption up to and until the same was pre-empted, as before stated.

That as to the allegations of said bill to the effect that some unknown person appeared before one of the officers of the United States land office, at Pueblo, in said judicial district, and personated and represented an individual called Philip Quinlon, and made and filed a certain state-
72 ment, called a declaratory statement, the tenor and effect whereof is set forth in said bill; that said person appeared before Irving W. Stanton, at said land office, on the eighth day of May, A. D. 1873, and personated the said Philip Quinlon and submitted the right of the said Philip Quinlon to pre-empt said land, and made and filed his affidavit as the said Philip Quinlon, the tenor and effect of which said affidavit is set forth in said bill of complaint; that the said Philip Quinlon was a fictitious and unreal person, whom the said unknown person represented and personated; that said unknown person did, at the time and place men-

tioned in said bill of complaint, procure two other persons to appear before Irving W. Stanton, at said land office, and as witnesses for the said alleged Philip Quinlon severally make, subscribe, and file an affidavit concerning the right of the said Philip Quinlon to pre-empt the said land, the contents of which said affidavit is set forth in said bill of complaint, this defendant saith that he is informed and believes it to be true; that said statement and the said affidavits were made at the time and place and before the person named in said bill of complaint; that he is also informed and believes it to be true, not being advised to the contrary thereof,
73 save by the said complainant's bill of complaint, and therefore claims the fact to be that the said Philip Quinlon, who appears to have been the pre-emptor of said land, was not a fictitious or supposed person, but a real individual who in person and in his own name made the said statement and the said affidavit alleged in said bill of complaint to have been made by said unknown person. That this defendant admits that upon the forwarding to the General Land Office of the complainant of the proof of the right of the said Philip Quinlon to pre-empt said land, the said complainant issued to the said Philip Quinlon a patent conveying to him the said land in fee-simple.

That this defendant is a stranger to all and singular the matters and things stated in the said declaratory statement, as well as in the said affidavits, and has no knowledge of the truth or falsity thereof, and therefore he leaves the said complainant to make such proof of the allegations of the said bill of complainant and concerning the alleged falsity of the said statement and the said affidavits as it may be able to produce; but believing the contrary of the said allegations to be true, he denies that the said complainant was deceived, defrauded, and misled in the issuance of the said patent, and that the statements contained in the
74 said affidavits and proof of pre-emption are false either wholly or in part.

That this defendant denies that he and the said Irving W. Stanton and the said Charles A. Cook, or this defendant and any person or persons, did upon the 12th day of May, A. D. 1873, or upon any other day, procure a person as alleged in said bill to personate the said Philip Quinlan, or any other person, either real or supposed, and in the name of the said Philip Quinlon to make and execute a deed of conveyance of the said land to one Henry H. Perry, or to any other person, either real or supposed; and this defendant denies that he did on the twenty-third day of June, A. D. 1873, or upon any other day, with the said Cook and the said Stanton, or with any other person or persons, procure some one, as is alleged in said bill, to personate the said Henry H. Perry, or any other person, either real or supposed, and in the name of Henry H. Perry to make and execute a deed of conveyance to this defendant for said land.

That this defendant has no personal acquaintance with the said several persons who are respectively named as the grantors in said deeds or with the persons by whom they were respectively executed, nor has he any personal knowledge concerning the execution of the said deeds; that to
75 the best of his information, and in his belief, the said deeds of conveyance are executed each by the person therein named as grantor and purporting to have executed the same.

That this defendant admits that on or about the fifteenth day of Sep-

tember, A. D. 1873, he made and executed a deed of conveyance for an undivided one-half interest in and to the said land, to Robert E. Carr, trustee.

That this defendant admits that the said several conveyances were made previous to the issuance of the patent for said land.

That this defendant denies that at the time of the said conveyance to him of the said land he had any knowledge of any fraud, or of any alleged fraud, relating to the procuring of the title to said land from the said complainant, and alleged in the said bill to have been committed, but he avers that he purchased the said land in good faith, and in the belief that there was no question in relation to the title thereto, and that all proceedings relating to the pre-emption thereof were regular and in conformity with law.

And further answering, this defendant says that he is informed and verily believes it to be true, and therefore he states it as a fact, that the person alleged in said bill to have personated an unreal or supposed person in the matter of the pre-emption of said land, and to have made a
76 false affidavit in relation to his right of pre-emption, as well as the said other persons, who are charged in said bill by the complainant to have made a false affidavit of and concerning the same matter, have not been, nor has any one or more of them been, arrested, indicted, or convicted for the fraud or for the perjury alleged in said bill to have been committed respectively by them; nor has any proceeding been commenced by the said complainant, or by any person in its behalf, for the purpose of bringing the said persons, or any of them, to trial or legal examination for the alleged fraud and crime charged against them respectively in the complainant's said bill. Wherefore he insists that the *the* said complainant is not entitled upon its own case to the relief prayed for in said bill.

And this defendant as to the several interrogatories appended to said bill and which the said complaint calls upon him to answer, saith that he is advised that the said complaint hath not by its own statement in said bill made out such a case as, under the law relating thereto and the rules and practice of this court, *as* entitles the said complainant to the discovery sought to be obtained by said interrogatories, and that he is, not by law, bound to answer the same, or any of them. And this defendant submits to the judgment of this court, and insists that by reason of the
77 premises this suit is altogether unnecessary and vexatious; and he claims the same benefit from this answer as if he had pleaded the several matters hereinbefore stated, or any of them, or as if he had demurred to the said bill or to any part thereof.

And this defendant denies all manner of unlawful combinations and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said bill of complaint contained, material or necessary for this defendant to make answer unto, not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant.

All of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and he hum-

bly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) DAVID H. MOFFAT, JR.
(Signed) SAYRE, WRIGHT & BUTLER, &
H. C. THATCHER, &
WILBUR F. STONE.

Sol's for Def't.

78 TERRITORY OF COLORADO,
County of Arapahoe, ss:

David H. Moffat, jr., being duly sworn, deposes and says that he is the defendant making the foregoing answer; that he has read said answer and knows the contents thereof, and that the same is true, except as to the matters therein stated on information and belief, and as to those matters he believes the said answer to be true.

DAVID H. MOFFAT, JR.

Subscribed and sworn to before me this 13th day of May, A. D. 1876.
(Signed) AMOS STECK, *Probate Judge.*

(Endorsed:) 14. No. 289. Third judicial district, Colorado Territory. United States of America vs. Irving W. Stanton et al. In chancery. Answer to amended bill of complaint. Filed May 15th, 1876. George A. Bute, cl'rk. Filed Febr'y 17th, A. D. 1877. Edward F. Bishop, clerk.

79 And afterwards and on the same day, to wit, the 17th day of February, A. D. 1877, came the said defendants, Irving W. Stanton and Charles A. Cook, in their own proper persons, and filed in said court and in said cause their joint and several answer to the amended bill of complaint herein, heretofore filed in the said district court in and for the third judicial district of the Territory of Colorado on May 22d, 1876, and the said answer is in the words and figures as follows, to wit:

Answer of Stanton and Cook to amended bill.

UNITED STATES OF AMERICA, TERRITORY OF COLORADO,
Third Judicial District, County of Pueblo, ss:

In the district court of the third judicial district, in the Territory of Colorado, sitting for the trial of causes arising under the Constitution and laws of the United States, at the county of Pueblo, in and for the body of the third judicial district of Colorado Territory. To the May term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
IRVING W. STANTON, CHARLES A. COOK, David H. Moffat, jr., defendants. } Answer.

The joint and several answer of Irving W. Stanton and Charles A. Cook, two of the defendants, to the amended bill of complaint of the United States of America, complainant.

These defendants, now and at all times hereafter saving and reserving

to themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imper-
80 fections in the said complainant's bill of complaint contained, for answer thereunto, or to so much and such part or parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, answering say:

That they admit that heretofore and before the occurrence of the matters and things in the said bill mentioned and alleged, the said complainant was the absolute owner in fee-simple of the piece or parcel of land in said bill described, and remained such owner up to and until the time the same was pre-empted, on, to wit, the 8th day of May, A. D. 1873.

That they deny that the said complainant now is, at the time of the commencement of this suit was, or since the said pre-emption of said land has been the owner thereof.

That they deny that the said land now is subject to the right of pre-emption under the provisions of the act of Congress named in said bill.

That they admit that it was subject to such right of pre-emption up to and until the same was pre-empted as before stated.

That as to the allegations of said bill to the effect that some unknown person appeared before one of the officers of the United States land office, at Pueblo, in said judicial district, and personated and represented
81 an individual called Philip Quinlon, and made and filed a certain statement called a declaratory statement, and which is set forth in said bill, and that said person appeared before Irving W. Stanton at said land office on the eighth day of May, A. D. 1873, and personated the said Philip Quinlon, and submitted the right of said Philip Quinlon to pre-empt said land, and made and filed his affidavit as the said Philip Quinlon, and which said affidavit is set forth in the said bill of complaint, and that said Philip Quinlon was an unreal and fictitious person, whom the said unknown person represented and personated; and that the said unknown person did, at the time and place mentioned in said bill of complaint, procure two other persons as witnesses for him to appear before Irving W. Stanton at said land office, and severally to make, subscribe, and file an affidavit concerning the right of the said Philip Quinlon to pre-empt the said land, which said affidavit is set forth in said bill of complaint, these defendants say: That the said Charles A. Cook was then receiver of public moneys at said land office, and that the said Irving W. Stanton was the register at said land office; that they admit it to be true that the said statement and the said affidavit were made at the time and place
82 and before the person named in said bill of complaint; and they further say that at the time the said statement was made and filed and the said affidavits were made and sworn to, these defendants and each of them were then informed and then believed, and do now believe, and therefore these defendants state the fact to be, not being advised to the contrary thereof, save by the complainant's said bill of complaint, that the said Philip Quinlon, the pre-emptor of the said land, was not a fictitious or supposed person, but an individual bearing the name last aforesaid, and who in person and in his said own name made the said statement and the said affidavit set forth in the said bill of complaint, and therein alleged to have been made by said unknown and fictitious person.

That they admit that upon the forwarding to the General Land Office of

himself and not one for the other, depose and say that they are the
88, 89 defendants who severally make *in* the above answer; that they have heard the said answer read, and know the contents thereof; that the same is true of their own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters they believe it to be true.

Subscribed and sworn to before me this 20th day of May, A. D. 1876.

(Signed) AMOS STECK, *Probate Judge.*

(Endorsed:) 14. No. 289. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton and Chas. A. Cook, impleaded, etc. Answer filed May 22d, 1876. (Signed) George A. Bate, cl'rk. Filed Feb. 17th, A. D. 1877. (Signed) Edward F. Bishop, clerk.

90 And afterwards, and on the same day, to wit, the 17th day of February, A. D. 1877, came the said complainant, by Charles D. Bradley, esq., attorney of the United States for Colorado Territory, and filed in said court and in said cause its second amended bill of complaint herein, heretofore filed in the said district court in and for the third judicial district of the Territory of Colorado on the 9th day of June, A. D. 1876, and the said second amended bill of complaint is in words and figures as follows, to wit:

Second amended bill of complaint.

No. 289.

UNITED STATES OF AMERICA.
Territory of Colorado, Third Judicial District, ss:

In the district court sitting for the trial of causes and the transaction of business arising under the Constitution and laws of the United States, at the county of Pueblo, for the body of said district. Of May term, A. D. 1876.

To the honorable Moses Hallett, chief justice of said Territory and judge of the district court aforesaid:

The United States of America, by Charles D. Bradley, attorney of the United States for Colorado Territory, and Eugene P. Jacobson, special assistant to said attorney, who prosecute the pleas of said United States in this behalf, brings this its amended bill of complaint against David H. Moffat, jr., a resident of the first judicial district of said Territory, and Robert E. Carr, a resident of the city of St. Louis, in the State of Missouri; and thereupon respectfully shows unto your honor that your orator was, on the first day of May, A. D. 1873, the owner in fee-simple of one hundred and 62.50 acres of land, situate in the county of Bent, in said judicial district, described as follows, to wit: Lots one and two and the north half of the southeast quarter of section numbered three, in township numbered twenty-three south, of range numbered fifty-two west of the sixth principal meridian, the same being part of its public domain and subject to the right of pre-emption by virtue of the acts of Congress in that behalf made and provided.

Further complaining, your orator shows that during the month of May aforesaid, and for some time before and afterwards, one Irving W. Stanton was the register of your orator's land office, and one Charles A. Cook the receiver of public moneys of your orator, for the district of lands
91 subject to sale in the Arkansas Valley land district, at Pueblo, in Colorado Territory, duly appointed and commissioned, and each performing the duties of his said respective office; that while so holding the offices aforesaid, they, conspiring and confederating with each other, and intending to cheat and defraud your orator out of its patent for the aforesaid piece of land, on the pretext that the same was due to a person who had done all the acts and performed all the duties required of him to be done and performed by virtue of the acts of Congress in that behalf made and provided, wrote out, or caused to be written out, in the form required by law and the regulations of your orator's Commissioner of the General Land Office, a certain paper, commonly called a declaratory statement, in the fictitious name of Philip Quinlan, and signed, or caused to be signed, the said fictitious name to said statement, by and in which said statement the above said land was described and the person represented by said fictitious name was said to declare his intention to claim said land as a pre-emptor thereof; but the day or date when said statement was so made or signed, or caused to be made and signed, by said Stanton and Cook, your orator is not informed and cannot say, except that the same purports to bear date of May eighth, A. D. 1873.

And your orator further shows that at the time of the making and signing of said declaratory statement said Stanton and Cook also wrote out, signed, and executed, or caused to be written out, signed, and executed, in the name of said supposed person, certain other papers, constituting the proof of pre-emption required by the acts of Congress and the rules and regulations of said General Land Office, in that behalf made and provided, and consisting, among other things, of an affidavit purporting to have been sworn to before the said Irving W. Stanton, as such register, by said supposed person, wherein he is said, among other things, to have made a settlement upon and improved said land in good faith to appropriate it to his exclusive use and benefit, and not for the purpose of sale or speculation, and that he had not directly or indirectly made any agreement or contract in any way or manner, with any person or persons whomsoever, by which the title which he might acquire from your orator would inure, in whole or part, to the benefit of any person except himself; and of an affidavit purporting to have been sworn to before said Stanton, as such register, by two other supposed persons, named Michael Quinlan and Orrin R. Peasley, which names were in like manner written, or caused to be written, under said affidavit by said Stanton and Cook, wherein said supposed Philip Quinlan is, among other things, stated to be a single man, over the age of twenty-one years, and a citizen of the United States and an inhabitant of the said piece of land; that no other person resided upon it entitled to the right of pre-emption; that said supposed Philip Quinlan entered upon said land and made a settlement in person on the same on the first day of May, 1872; that he built a house and made other improvements on said land; that he lived in said house and made it his exclusive home
92 from the 15th day of May, 1872, to the date of the pretended making of said oath and subscribing said affidavit; that he did not remove from his own lands within the Territory of Colorado to make said

himself and not one for the other, depose and say that they are the 88, 89 defendants who severally make *in* the above answer; that they have heard the said answer read, and know the contents thereof; that the same is true of their own knowledge, except as to the matters and things therein stated on information and belief, and as to those matters they believe it to be true.

Subscribed and sworn to before me this 20th day of May, A. D. 1876.

(Signed) AMOS STECK, *Probate Judge*.

(Endorsed:) 14. No. 289. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton and Chas. A. Cook, impleaded, etc. Answer filed May 22d, 1876. (Signed) George A. Bute, cl'k. Filed Feb. 17th, A. D. 1877. (Signed) Edward F. Bishop, clerk.

90 And afterwards, and on the same day, to wit, the 17th day of February, A. D. 1877, came the said complainant, by Charles D. Bradley, esq., attorney of the United States for Colorado Territory, and filed in said court and in said cause its second amended bill of complaint herein, heretofore filed in the said district court in and for the third judicial district of the Territory of Colorado on the 9th day of June, A. D. 1876, and the said second amended bill of complaint is in words and figures as follows, to wit:

Second amended bill of complaint.

No. 289.

UNITED STATES OF AMERICA,
Territory of Colorado, Third Judicial District, ss:

In the district court sitting for the trial of causes and the transaction of business arising under the Constitution and laws of the United States, at the county of Pueblo, for the body of said district. Of May term, A. D. 1876.

To the honorable Moses Hallett, chief justice of said Territory and judge of the district court aforesaid:

The United States of America, by Charles D. Bradley, attorney of the United States for Colorado Territory, and Eugene P. Jacobson, special assistant to said attorney, who prosecute the pleas of said United States in this behalf, brings this its amended bill of complaint against David H. Moffat, jr., a resident of the first judicial district of said Territory, and Robert E. Carr, a resident of the city of St. Louis, in the State of Missouri; and thereupon respectfully shows unto your honor that your orator was, on the first day of May, A. D. 1873, the owner in fee-simple of one hundred and 62.50 acres of land, situate in the county of Bent, in said judicial district, described as follows, to wit: Lots one and two and the north half of the southeast quarter of section numbered three, in township numbered twenty-three south, of range numbered fifty-two west of the sixth principal meridian, the same being part of its public domain and subject to the right of pre-emption by virtue of the acts of Congress in that behalf made and provided.

Further complaining, your orator shows that during the month of May aforesaid, and for some time before and afterwards, one Irving W. Stanton was the register of your orator's land office, and one Charles A. Cook
91 the receiver of public moneys of your orator, for the district of lands subject to sale in the Arkansas Valley land district, at Pueblo, in Colorado Territory, duly appointed and commissioned, and each performing the duties of his said respective office; that while so holding the offices aforesaid, they, conspiring and confederating with each other, and intending to cheat and defraud your orator out of its patent for the aforesaid piece of land, on the pretext that the same was due to a person who had done all the acts and performed all the duties required of him to be done and performed by virtue of the acts of Congress in that behalf made and provided, wrote out, or caused to be written out, in the form required by law and the regulations of your orator's Commissioner of the General Land Office, a certain paper, commonly called a declaratory statement, in the fictitious name of Philip Quinlan, and signed, or caused to be signed, the said fictitious name to said statement, by and in which said statement the above said land was described and the person represented by said fictitious name was said to declare his intention to claim said land as a pre-emptor thereof; but the day or date when said statement was so made or signed, or caused to be made and signed, by said Stanton and Cook, your orator is not informed and cannot say, except that the same purports to bear date of May eighth, A. D. 1873.

And your orator further shows that at the time of the making and signing of said declaratory statement said Stanton and Cook also wrote out, signed, and executed, or caused to be written out, signed, and executed, in the name of said supposed person, certain other papers, constituting the proof of pre-emption required by the acts of Congress and the rules and regulations of said General Land Office, in that behalf made and provided, and consisting, among other things, of an affidavit purporting to have been sworn to before the said Irving W. Stanton, as such register, by said supposed person, wherein he is said, among other things, to have made a settlement upon and improved said land in good faith to appropriate it to his exclusive use and benefit, and not for the purpose of sale or speculation, and that he had not directly or indirectly made any agreement or contract in any way or manner, with any person or persons whomsoever, by which the title which he might acquire from your orator would inure, in whole or part, to the benefit of any person except himself; and of an affidavit purporting to have been sworn to before said Stanton, as such register, by two other supposed persons, named Michael Quinlan and Orrin R. Peasley, which names were in like manner written, or caused to be written, under said affidavit by said Stanton and Cook, wherein said supposed Philip Quinlan is, among other things, stated to be a single man, over the age of twenty-one years, and a citizen of the United States and an inhabitant of the said piece of land; that no other person resided upon it entitled to the right of pre-emption; that said supposed Philip Quinlan entered upon said land and made a settlement in person on the same on the first day of May, 1872; that he built a house and made other improvements on said land; that he lived in said house and made it his exclusive home
92 from the 15th day of May, 1872, to the date of the pretended making of said oath and subscribing said affidavit; that he did not remove from his own lands within the Territory of Colorado to make said

settlement; and that he had since plowed, fenced, and cultivated about eighteen acres of said land.

And your orator further shows that at and before the time when said Stanton and Cook wrote out, signed, and executed, or caused to be written out, signed, and executed, and when said Stanton professed to have received the oath of said supposed pre-emptor and witnesses to said proof of pre-emption, said Cook was possessed of a certain scrip, commonly called an agricultural college scrip, issued to the State of Florida in pursuance of an act of Congress in that behalf made and provided, which said scrip bore upon it an endorsement in blank by one W. D. Bloxham, who was in that behalf duly authorized by the legislature of said State; that for the purpose of locating said land with said scrip in the name of said supposed pre-emptor said Stanton and Cook inserted, or caused to be inserted, in said blank endorsement said fictitious name and the residence of said supposed person, and in that name located said scrip on said land in said land office at Pueblo, and they did divers other acts in said fictitious name to cause your orator to believe that said supposed Philip Quinlan was a real and not a supposed person, and that such supposed person had actually appeared before them and made the several statements and proofs required by law and the regulations of said General Land Office to be made to entitle such supposed person to the pre-emption of said land, and had actually sworn to said proof before said Stanton, as such register.

And your orator further shows that by the rules and regulations of its said General Land Office the officers of a local land office are required, on proof being made in due form of the right of any person to pre-empt any part of your orator's public domain, and the same being located on with agricultural college scrip by such person, to make out in duplicate a certificate setting forth in substance that such person had located said scrip on said land, and to forward one duplicate thereof to said General Land Office and the other to deliver to the person making said location. And your orator says that at the time of writing out and preparing, or causing to be written out and prepared, by said Stanton and Cook, of said proof in said fictitious name, they also made out, pursuant to said rules and regulations and by color of their said office, a certificate setting forth in substance that the supposed person represented by said fictitious name had, on the day of the date of said certificate, located said agricultural college scrip of the State of Florida on said above-described land, and made due proof of his right to pre-empt and receive a patent for said land from your orator. And thereupon said Stanton and Cook, by color of their said office, forwarded said proof, agricultural college scrip, and one of said duplicate certificates to your orator's said General Land Office, at Washington, in the District of Columbia, and requested a patent for said land to issue from your orator in the name of said supposed person.

And your orator further shows that by the rules and regulations which then and since have governed it in the issuance of patents for lands located with agricultural college scrip no patent was or is issued by your
93 orator except on presentation at its said General Land Office, by the person making said location, his agent, or his assign or his agent, of the duplicate certificate so as aforesaid delivered to the locator of said land.

And your orator further shows that after the forwarding by said Stanton and Cook of said supposed proof of pre-emption, said agricultural college

scrip, and one of said duplicate certificates to your orator's said General Land Office, at Washington, on, to wit, the sixteenth day of June, A. D. 1873, one Jerome B. Chaffee, as agent of the defendant David H. Moffat, jr., appeared before the officers of said General Land Office and presented to them said other duplicate certificate of location, and then requested said officers to cause a patent for said land to issue from your orator to said supposed person, and to be sent to him, said Jerome B. Chaffee. And your orator, confiding in the honesty of its said officers, Stanton and Cook, and believing the statements contained in said supposed proof of pre-emption and certificate of location to be true, and that a person existed who represented said fictitious name, and that he had a bona fide right to pre-empt the above-described land, and being misled by the representations so made in said proof and certificate, and relying entirely on their truth, was induced to, and afterwards, to wit, on the fourth day of October, A. D. 1873, did, in pursuance of the request of said Chaffee, issue its patent to the above-described land in the name of said supposed person and transmit the same to said Chaffee, thereby granting and conveying its title in fee in said land to said supposed person.

And your orator distinctly avers and charges the fact to be that no person by the name of Philip Quinlan ever settled upon said land or improved the same, and that no person whatsoever appeared or presented himself before said Cook and Stanton, or either of them, at any time, and made said declaratory statement, proof of pre-emption, or agricultural college scrip location, either as a pre-emptor or witness for any pre-emptor, as in and by said proof of pre-emption and location certificate is supposed, but that the same and each of them are false and fraudulent, and were designed, made, and executed by said Stanton and Cook in manner aforesaid, and for the purpose of fraudulently depriving your orator of its title to said land, and vesting the same by other fraudulent means in the defendant David H. Moffat, jr.

And your orator further shows that said Moffat now has said patent, and claims to hold the legal title to and to be the owner of said land by virtue thereof and of certain other conveyances hereinafter mentioned; and your orator avers and charges the fact to be that said duplicate certificate so presented to the officers of said General Land Office was received by said Moffat from the defendant Cook shortly after the time of the making thereof by said Stanton and Cook, and was afterwards by said Moffat placed in the hands of said Chaffee to be presented to said General Land Office as aforesaid, and that at the time of so receiving and placing the same in the hands of said Chaffee said Moffet well knew of the supposed pre-emption of said land, and that it had been fraudulently made, and that the statements contained in said supposed proof and certificate were false and fraudulent.

94 And your orator further shows that said Moffat now holds a certain deed purporting to have been made and executed on, to wit, the 23d day of May, A. D. 1873, in the name of said supposed Philip Quinlan, and to have been acknowledged by him in due form of law on the same day, and to convey the above-described land to Henry H. Perry, which your orator avers to be also a fictitious person. And said Moffat also holds a certain other deed, purporting to have been made and executed on, to wit, the 23d day of June, A. D. 1873, in the name of said supposed Henry H. Perry, and to have been acknowledged by him in due

form of law on the same day, and to convey said land to him, said Moffat. And your orator says that subsequently to the obtaining of said patent from your orator, on, to wit, the fourteenth day of November, A. D. 1873, said Moffat caused the same, and said deed executed in the name of said supposed Philip Quinlan, and said deed executed in the name of said supposed Henry H. Perry, to be recorded in volume 1 of the records of the county clerk and recorder of Bent County, in Colorado Territory, and the same now there remain recorded, as by reference thereto had will more fully appear. But by what means said deeds, or either of them, were made executed, or acknowledged, or obtained by said Moffat, your orator cannot say; but it charges the fact to be that no person by the name of Philip Quinlan nor any person by the name of Henry H. Perry ever made, executed, or acknowledged either of said deeds. Yet although said Moffat now holds said patent, and well knew at the time he received the certificate from said Cook, as aforesaid, of the fraudulent means which had been employed whereby to induce the making and issuing by your orator of the patent aforesaid, he refuses to redeliver the same to your orator or to cancel the same; and said deeds executed in the name of said supposed Philip Quinlan, and of said supposed Henry H. Perry, to cancel he also refuses, although the same are a cloud on the title of your orator to said land, and tend to depreciate the value and sale, and to prevent the improvement thereof under the acts of Congress in that behalf made and provided.

And your orator further shows that on the fifteenth day of September, A. D. 1873, said Moffat made and executed his certain deed, and acknowledged the same on the fourth day of November, A. D. 1873, thereby conveying to the defendant Robert E. Carr, as trustee, an undivided one-half interest in the above-described land, which said deed is duly recorded in book 1, on pages 435 and 436 thereof, of the records of Bent County, in Colorado Territory, as on reference being thereto had will more fully appear; but what is the nature of said trust is not disclosed or declared by said deed, and your orator does not know, and therefore is unable to say, in trust for whom or for what purpose said conveyance was made to said Carr; but your orator avers and charges the fact to be that no good
95 or valuable consideration moved from said Carr, or from any other person or source, to said Moffat, and that said conveyance was voluntary and without lawful consideration. And your orator further avers and charges the fact to be that said Carr, at the time of said conveyance, had notice and was fully informed of the supposed pre-emption of said land, and that it had been fraudulently made, and that the statements contained in said proof of pre-emption were false and fraudulent. Yet although the defendant Carr now holds said deed, and claims to have the legal title by virtue thereof to an undivided one-half interest in the above-described land in trust for some persons or object to your orator unknown, and well knew of the fraud perpetrated on your orator in obtaining from it its said patent, he refuses to cancel said deed, notwithstanding the same is a cloud on the title of your orator to said land, and tends to depreciate the value and sale and to prevent the improvement thereof under the acts of Congress in that behalf made and provided.

Forasmuch, therefore, as your orator is without remedy in the premises save in a court of equity, and to the end that said David H. Moffat, jr., and Robert E. Carr, who are made parties defendant to this bill, may be required to make full and direct answer to the same, but not under oath, the answer

under oath being hereby waived, and that said patent may be set aside and declared void and delivered up to be canceled, and said deed of conveyance from said supposed Philip Quinlan to said supposed Henry H. Perry, and from said supposed Henry H. Perry to said David H. Moffat, jr., and from said Moffat to said Carr, as aforesaid, may be set aside and declared void as against your orator, as a cloud upon the title of your orator, and that said deeds may be delivered up to be canceled, and that your orator may have such other and further relief in the premises as equity may require and to your honor shall seem meet—

May it please your honor that the writ of summons in chancery issue, directed to the marshal of the United States for the Territory of Colorado, commanding him that he summon said David H. Moffat, jr., and Robert E. Carr to appear before this court, on a day in said summons to be stated according to law, then and there to answer all and singular the premises and to stand to, perform, and abide such order and decree therein as your honor may make and as shall seem agreeable to equity and good conscience, etc.

(Signed) CHARLES D. BRADLEY,
Attorney of the United States for Colorado Territory.

(Signed) EUGENE P. JACOBSON,
Special Assistant to the Attorney of the United States for Colorado Territory.

(Endorsed:) 14. No. 289. Territory of Colorado, third judicial district. United States of America vs. Irving W. Stanton et al. 2d amended bill of complaint. Filed June 9th, 1876. (Signed) George A. Bute, clerk. Filed Feb'y 17th, A. D. 1877. (Signed) Edward F. Bishop, clerk.

96 And afterwards, and on the same day, to wit, the 17th day of February, A. D. 1877, came the said defendants, David H. Moffat, jr., and Robert E. Carr, by Alfred Sayre, esq., their solicitor, and filed in said court and in said cause their answer to the second amended bill of complaint; and the said answer of the defendants, Moffat, jr., and Carr, is in words and figures as follows, to wit:

Answer of Moffat, jr., and Carr to second amended bill of complaint.

No. 289.

UNITED STATES OF AMERICA,
State of Colorado, ss:

In the district court of the United States of America, sitting within and for the district of Colorado. Of the December term, A. D. 1876.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
DAVID H. MOFFAT, JR., AND ROBERT E. CARR,
defendants.

The answer of David H. Moffat, jr., and Robert E. Carr, the defendants, to the second amended bill of complaint of the United States of America, complainant.

These defendants, now and at all times hereafter saving and reserving

to themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainty, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or to so much and such part of thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering saith:

That they admit that heretofore, and before the occurrence of the matter and things in said bill mentioned and alleged, that the said complainant was the absolute owner in fee-simple of the piece or parcel of land in said bill described, and remained such owner up to and until the same was pre-empted on the eighth day of May, A. D. 1873; but the said defendants deny that the said complainant now is, or at the time of the commencement of this suit was, or since the pre-emption of said land has been, the owner thereof, or that the said land now is subject to the right of pre-emption by virtue of the acts of Congress in that behalf made and provided. These defendants also admit that during the month of May, A. D. 1873, and for some time before and afterwards, Irving W. Stanton was the register of the complainant's land office, and one Charles A. Cook was the receiver of public moneys for the said complainant, for the district of lands subject to sale in the Arkansas Valley land district, at Pueblo, Colorado; but these defendants deny that while holding the said offices aforesaid the said persons conspired and confederated with each other with the intention to cheat and defraud your orator out of its patent for the aforesaid piece of land, on the pretext mentioned in said bill or any other; and this defendant avers that on the eighth day of May, A. D. 1873, a certain paper,
97 commonly called a declaratory statement, and in the name of and signed by Philip Quinlan, was written out in the form required by law and the regulations for your orator's Commissioner for the General Land Office, by said Philip Quinlan, or for him, in and by which said statement the said land was described and the said Philip Quinlan declared his intention to claim and hold said land as the pre-emptor thereof; and these defendants deny that the name of the said Philip Quinlan signed to the said declaratory statement is a fictitious name, and aver that the name signed thereto as aforesaid was the real name of the pre-emptor of said land.

And these defendants admit that at the time of making and signing of said declaratory statements there was written out, signed, and executed certain other papers, constituting the proof of the pre-emption required by the acts of Congress, and the rules and regulations of the General Land Office in that behalf made and provided, and consisting, among other things, of an affidavit sworn to before the said Irving W. Stanton, as such register, by the said Philip Quinlan, wherein he says, among other things, that he made a settlement upon and improved the said land to appropriate it to his exclusive use and benefit, and not for the purpose of sale or speculation, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title by which he might acquire from your orator would issue, in whole or in part, to the benefit of any person except himself. And the defendant denies that the said affidavit was signed and executed by the said person in an unreal or fictitious name; but on the contrary, therefore, these defendants aver that the said Philip Quinlan was a real person, and that the name signed to the said affidavit was the said person's real name.

And these defendants further admit that at the time last aforesaid there was an affidavit made and executed and sworn to before the said Stanton, as such register, by two other persons, named respectively Michael Quinlan and Orrin R. Peasley, and who deposed, among other things, that Philip Quinlan, executed the said declaratory statement, is a single man, over the age of twenty-one years, and a citizen of the United States, and an inhabitant of said piece of land, and that no other person resided upon it entitled to the right of pre-emption; that the said pre-emptor, Philip Quinlan, entered upon said land and made a settlement on the same on the first day of May, A. D. 1872; that he built a house and made other improvements on said land; that he lived in said house and made it his exclusive home from the 15th day of May, A. D. 1872, up to the date of said affidavit; that the said pre-emptor did not remove from his own house in the Territory of Colorado to make such a settlement, and that he had since plowed, fenced, and cultivated about 18 acres of said land; but these defendants deny that the names of Philip Quinlan, Michael Quinlan, and Orrin R. Peasley, signed to the said affidavit, were unreal and fictitious names; on the contrary, therefore, these defendants aver that the names so as aforesaid signed to the said affidavits were the real names of the persons who attached their signatures, and that the said affidavits were sworn to by the persons who signed the names, and that their signatures thereto were real and genuine.

98 And these defendants, further answering, say that as to the allegation of said bill to the effect that when the oath of the said pre-emptor and of the said witnesses to the said proof of pre-emption were written out, signed, and executed (and which said pre-emptor and witnesses are alleged in said bill to be supposed persons), the said Cook was possessed of a certain scrip, commonly called "agricultural scrip," issued to the State of Florida in pursuance of an act of Congress in that behalf made and provided, these defendants have no knowledge or information, except as they are advised by the said complainant's bill of complaint, and therefore these defendants deny the statement of said bill last-above made, and leave the said complainant to his proof of the same.

And these defendants, further answering, say that the location of the said land with said scrip, and in the name of the said pre-emptor, and the insertion of the name of said pre-emptor in the blank endorsement of said scrip, and the residence of said pre-emptor, and the location of said scrip upon said land, and the other acts and things done to entitle said person to the pre-emption of said land were done and performed by the said Philip Quinlan and his said witnesses, and not by the said Cook and Stanton, as is alleged in said bill; and that the said pre-emptor and his said witnesses are not supposed, but are real persons, and that they actually appeared and made oath before said Stanton as such register.

And these defendants, further answering, say that they admit that the said Stanton and Cook, in pursuance of the rules and regulations of their said office, made out a certificate setting forth, in substance, that the said Philip Quinlan had, on the date of the said certificate, located said agricultural college scrip of the State of Florida on the above-described land, and made due proof of his right to pre-empt and receive a patent for said land from the said complainant; and that the said certificate was by the said Stanton and Cook, together with the proof of pre-emption and the said agricult-

ural college scrip, forwarded to the General Land Office at Washington, as is set forth in said bill of complaint; but these defendants deny that the said pre-emptor was in said certificate represented by a fictitious name, and that the proof of said pre-emption was written out and prepared, or caused to be written out and prepared, by the said Stanton and Cook in a fictitious name, and in behalf of an unreal or supposed person.

And these defendants, further answering, say that they deny that on the sixteenth day of June, A. D. 1873, one Jerome B. Chaffee, as the agent of this defendant, appeared before the officers of the General Land Office and presented to them a duplicate certificate of said location, and then requested said officers to cause a patent of said land to issue from said complainant in the name of a supposed person, as is alleged in said bill, and to be sent to him, the said Chaffee; and this defendant admits that after the pre-emption of said land, and on or about the fourth day of October, 1873, the said complainant did issue its patent to the above-described land in the name of the pre-emptor thereof, thereby carrying and conveying the title in fee to said land to the said pre-emptor, which said pre-emptor was a real and not a supposed person, as is assumed and alleged in said bill of complaint, but whether said patent was transmitted by the said complainant to the said Chaffee is to these defendants unknown.

99 And these defendants aver and charge the fact to be that a person by the name of Philip Quinlan did settle upon said land and improve the same, and that said person and the said Michael Quinlan and Orrin R. Peasley, as witnesses, appeared and presented themselves before the said Stanton and Cook, or one of them, and made the said declaratory statement, proof of pre-emption, or agricultural college scrip location, as in and by said proof of pre-emption and location certificate is alleged, and that the said persons, and each of them, are real persons, and that none of the proceedings relating to the pre-emption of said land were false or fraudulent, nor were they signed, made, and executed by the said Stanton and Cook, or by any other person or persons, for the purpose of fraudulently depriving the complainant of the title to said land, and of vesting the said title by other fraudulent means in these defendants.

And these defendants, further answering, say that they claim to hold the legal title to and be the owner of said land by virtue of patents by the said complainant issued therefor, and by virtue of certain conveyances; but they deny that they received a duplicate certificate of the pre-emption of said land from said Cook shortly after the entry of said land, and that they, the said defendants, placed the said certificate in the hands of the said Chaffee, to be by him presented to the General Land Office, and that at the time when it is alleged in the said bill that they so received the said certificate from the hands of the said Cook and placed the same in the hands of the said Chaffee he had knowledge that the said pre-emption of said land had been fraudulently made, and that the statement contained in said proof of pre-emption and certificate of location were false and fraudulent.

And these defendants further deny that they had any knowledge of any fraud or of any alleged fraud relating to the procuring of the title of said land from said complainant, and which is alleged in said bill to have been committed; and they aver that they purchased the said land in good faith and in the belief that there was no question relating to the title thereto, and that all proceedings relating to the title thereof were regular and in conformity with law.

And these defendants, further answering, say that they admit that on the 23rd day of May, A. D. 1873, Philip Quinlan made and executed a deed acknowledged in due form of law and conveying the above described land to Henry H. Perry, and that the defendant Moffat received a certain other deed, made and executed on the 23rd day of June, A. D. 1873, in the name of said Henry H. Perry, and acknowledged by him in due form of law on the same date, conveying the said land to this defendant; and that said deeds, and each of them, were recorded in the office of the county clerk and recorder of Bent County, in the now State of Colorado, and that the same now there remains recorded; but this defendant denies that the said grantor and grantee in the first of said deeds and the grantor in the latter of said deeds were unreal and fictitious persons, but on the contrary avers the fact to be that the persons who respectively made, executed, and acknowledged said deeds were real persons, and that such making, executing, and acknowledging thereof were in their real and genuine names.

And these defendants, further answering, admit that on the fifteenth day of September, 1873, or thereabouts, the said defendant Moffat made and executed his certain deed and acknowledged the same on the fourth
99½ day of November, 1873, or thereabouts, thereby conveying to the said defendant Carr, as trustee, an undivided one-half interest in the above-described land, which said deed is recorded as is set forth in the said bill of complaint. And these defendants say that the said conveyance was made to the said Carr in trust for himself and certain associates who were interested with him in obtaining the title to said land, and that the said conveyance was so as aforesaid made in trust to the said Carr alone, for the reason that the said Carr and his associates believed that it would be more convenient to have the legal title vested in him as trustee than to have the said title expressly conveyed to him and his associates by name. And these defendants aver and state the fact to be that a good and valuable consideration did move from the said Carr and his associates to the said Moffat for the making of said conveyance, and that the said conveyance was not fraudulent, and without lawful consideration. And these defendants deny that the said Carr or any of his associates, or persons interested in said conveyance, had notice and were informed that the said land had been fraudulently pre-empted and that the statements contained in proof of pre-emption were false and fraudulent. On the contrary thereof, these defendants were informed, and then believed, and now believe, that the said proofs of pre-emption were genuine and bona fide, and were without fraud as against the rights of the said complainant or any other person.

100 And these defendants deny all manner of unlawful combinations and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said bill of complaint contained, material or necessary for these defendants to make answer unto, not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of these defendants.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct; and they

humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) ALFRED SAYRE,
Solicitor for Defendants.

(Signed) BUTLER & WRIGHT.
Of Counsel.

(Endorsed:) No. 14. In the district court of the United States of America for the district of Colorado. United States of America, complainant, vs. David H. Moffat, jr., and Robert E. Carr, defendants. Answer to second amended bill of complaint. Filed Feb'y 17th, 1877. (Signed) Edward F. Bishop, clerk.

101 And afterwards and on, to wit, the 19th day of February, A. D. 1877, came the said complainant, by Westbrook S. Decker, esq., its attorney, and filed in said court and in said cause its replication to the answer of D. H. Moffatt, jr., and Robert E. Carr, defendants, and the said replication is in words and figures as follows, to wit:

Replication to answer of Moffat, jr., and Carr.

Circuit court of the United States for the district of Colorado, *ss.*

UNITED STATES)
vs.
I. W. STANTON ET AL.)

The replication of the United States, complainant, to the answer of D. H. Moffatt, jr., and R. E. Carr, trustee, defendants.

The complainant, saving and reserving to itself all and all manner of advantages of exception to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this complainant; without this, that any matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

(Signed) WESTBROOK S. DECKER,
United States District Attorney for the United States.

(Endorsed:) 14 c. United States vs. I. W. Stanton et al. Replication. Filed February 19, A. D. 1877. (Signed) Edward F. Bishop, clerk. W. S. Decker, att'y for plaintiff.

102 And afterwards, and on the same day, to wit, the 19th day of February, A. D. 1877, and in the said circuit court of the United States, the following additional order was had and entered of record in *in* said cause, to wit:

Order: Cause referred to master in chancery.

THE UNITED STATES *vs.* IRVING W. STANTON ET AL.	14. In chancery. To compel surrender of land patent.

At this day comes W. S. Decker, esq., district attorney, who prosecutes the pleas of the United States in this behalf, and on his motion it is ordered by the court that this cause be referred to Henry C. F. Jensen, esq., one of the masters in chancery of this court, to take proof touching the matters and things in the said complainant's bill of complaint alleged, and let the said master report the same to the court, when so taken, with all convenient speed.

And afterwards, and on, to wit, the 5th day of July, A. D. 1877, and in the said circuit court of the United States, the following additional order was had and entered of record in *in* said cause, to wit:

THE UNITED STATES *vs.* DAVID H. MOFFAT, JR., & ROBERT E. CARR, trustee.	14. In chancery. To compel surrender of land patent.

From district court, third district, Colorado Territory.

At this day, for good and sufficient reasons to the court appearing, it is ordered by the court that this cause be consolidated with certain other causes against the said defendants in this court now depending, and numbered, respectively, upon the grand docket of the court as numbers
103 14, 15, 17, 22, 23, 28, 31, 34; and let the said cause, consolidated as aforesaid, be known and numbered as number 14.

And afterwards, and on, to wit, the 7th day of July, A. D. 1877, the following deposition on behalf of the complainant was opened, published, and filed in said court and in said cause, to wit:

Deposition of Gleason F. Lewis on behalf of plaintiff.—Filed in No. 9 and used in this cause, per stipulation.

104 THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

The President of the United States of America to Gleason F. Lewis and William E. Lewis:

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear before me, Earl Bill, clerk of the circuit court of the United States for the northern district of Ohio, at my office, in the city of Cleveland, in said district, on the 2nd day of July, A. D. 1877, at 10 o'clock a. m. of said day, then and there to testify and give evidence on behalf of the plaintiff in a suit pending in the circuit court of the United States for the district of Colorado, wherein The United States is plaintiff and David H. Moffat, jr., is defendant.

Hereof fail not, under penalty of what may befall you thereon.

Witness my official signature, at Cleveland, this 30th day of June, A. D. 1877, and in the 101st year of the Independence of the United States of America.

(Signed) EARL BILL, *Clerk.*

105 (Endorsed:) United States circuit court, northern district of Ohio. Plaintiff's subpœna. United States *vs.* David H. Moffat, jr.

U. S. OF :

On the 30th day of June, 1877, I delivered a true copy of this writ to the within named Gleason F. Lewis, at Cleveland, Ohio; the within-named William E. Lewis not found.

(Signed) N. B. PRENTICE,
U. S. Marshal.
By JOHN ODELL, *Dep.*

Service, 50.

In the circuit court of the United States for the district of Colorado.

UNITED STATES OF AMERICA }
vs.
DAVID H. MOFFAT, JR. }

DISTRICT OF COLORADO, *ss:*

106 Lucien Peyton, being duly sworn, says that he is the agent of the United States, the plaintiff in the above-entitled cause, in the preparation for trial and conduct of the said suit; that he knows who are material witnesses for the United States in said cause; that he is advised by the counsel for the United States, and verily believes, that the testimony of Gleason F. Lewis and William E. Lewis, at present of Cleveland, Ohio, is material and necessary for the plaintiff, the United States, in the prosecution of such cause; that the said Gleason F. Lewis and William E. Lewis live and reside at the city of Cleveland, in the State of Ohio, more than one hundred miles from the city of Denver, in the State of Colorado, where the court at which deponent expects the said cause to be tried is to be held, and where the said cause is pending.

(Signed) L. PEYTON.

Subscribed and sworn to before me this 22nd day of June, A. D. 1877.

{U. S. CIRCUIT COURT SEAL.} (Signed) EDWARD F. BISHOP,
Clerk Circuit Court U. S., District of Colorado.

107 (Endorsed:) United States vs. David H. Moffat, jr. Affidavit.

In the circuit court of the United States for the district of Colorado.

UNITED STATES OF AMERICA }
vs. } Notice to take deposition.
DAVID H. MOFFAT, JR. }

Please take notice that the depositions de bene esse of Gleason F. Lewis and William E. Lewis, of Cleveland, Ohio, who reside more than one

hundred miles from the city of Denver, in the State of Colorado, where the court at which the above-entitled cause will be tried is to be held, will be taken, to be read in evidence at the trial of the said cause on the part of the plaintiff therein, before Earl Bill, clerk of the circuit of the
108 United States for the northern district of Ohio, at his office in the United States court-house in the city of Cleveland, in the State of Ohio, on the 2nd day of July, 1877; at 10 o'clock in the forenoon of that day; and said taking of said depositions will be continued from day to day at the same place until completed, at which time and place you are hereby notified to be present and put interrogatories to the said witnesses if you shall think fit.

Dated the 22nd day of June, 1877.

Yours, &c.,

(Signed) G. G. SYMES AND
W. S. DECKER,
Solicitors and Counsel for the United States.

To ALFRED SAYRE, *Solicitor for Defendant*, and BUTLER and WRIGHT, *of Counsel.*

STATE OF COLORADO,
County of Arapahoe:

Frank W. Owers, being duly sworn, says that on the 22nd day of June, 1877, he personally served on Hugh Butler, within named as one of the counsel for defendant, at 4.30 p. m. of said day, a true and correct
109 copy of the above notice by delivering the same to him personally and leaving the same with him, and that he, the said Owers, is over 21 years of age and competent to be a witness in the within-name' cause.

(Signed) FRANK W. OWERS.

Sworn to and subscribed before me this 22nd day of June, 1877.

[NOTARIAL SEAL.] (Signed) LEWIS C. GOLDSBOROUGH,
Notary Public.

(Endorsed:) 9. The United States circuit court. United States vs. D. H. Moffat, jr. Notice to take depositions of Gleason Lewis and William Lewis.

In the circuit court of the United States for the district of Colorado.

UNITED STATES OF AMERICA }
vs.
110 DAVID H. MOFFAT, JR. }

Let Gleason F. Lewis and William E. Lewis, the witnesses named in the annexed affidavit, be examined de bene esse before me, Earl Bill, clerk of the circuit court of the United States for the northern district of Ohio, on the part of the plaintiff, at my office in the United States court-house, in the city of Cleveland, in the State of Ohio, on the 2nd day of July, 1877, at 10 o'clock in the forenoon, and let the said examination continue from day to day until completed.

(Signed) EARL BILL,
Clerk of the Circuit Court of the United States for the Northern District of Ohio.

(Endorsed:) 9. In the United States circuit court. United States vs. D. H. Moffat, jr.

111 In the circuit court of the United States for the district of Colorado.

THE UNITED STATES OF AMERICA
vs.
DAVID H. MOFFAT, JR.

Deposition of witnesses taken by and before Earl Bill, clerk of the circuit court of the United States for the northern district of Ohio, at his office in the United States court-house, in the city of Cleveland, in the State of Ohio, on the 2nd day of July, A. D. 1877, to be used and read in evidence in the above cause. Present on behalf of the plaintiff, Edward S. Meyer, esq., assistant district attorney of the United States for said last-named district.

GLEASON F. LEWIS, of Cleveland, Ohio, being by me first duly cautioned and sworn, deposes and says as follows:

Ques. 1. (By plaintiff's counsel.) State your age, occupation, and present place of residence, distance from your residence from the city of Denver State of Colorado.

Ans. I am 54 years of age; land-warrant broker by occupation,
112 and live in Cleveland, at least 1000 miles from said Denver.

Ques. 2, Were you the owner of any amount of Florida agricultural college scrip on or about the months of April, May, and June, 1873?

Ans. I was the the owner of all the agricultural college scrip, amounting to 90,000 acres and considerable portions of it during those months.

Ques. Did you sell and deliver any of such scrip to Daniel Witter, of the city of Denver, and State of Colorado?

Ans. I did sell him a portion of it and delivered the same through the Colorado National Bank at Denver.

Ques. State the numbers of the said agricultural college scrip which you sold and delivered to said Daniel Witter, as aforesaid, in the year 1873.

Ans. Nos. 33 & No. 180 sent from Cleveland April 25, 1873; scrip No. 29, April 25, 1873; scrip No. 181 & 186, sent from Cleveland April 26, 1873; scrip Nos. 174 & 175, sent April 28, 1873; that is all the numbers that I can now recollect; I think I sold him other scrip, the num-
113 bers of which I cannot now recollect by reason of the loss of two of my copy books. I think that all or nearly all the deliveries were made through the Colorado National Bank, whose books will doubtless contain evidence on the subject.

Ques. Did you sell, transfer, or deliver to said Daniel Witter, of Denver, Colorado, the following numbered pieces or certificates of agricultural college scrip or land scrip of the State of Florida on or about the months of April, May, or June, 1873, or at any time, namely, Nos. 3, 4, 5, 6, 7, 29, 30, 31, 32, 33, 34, 35, 36, 37, 180, 181, 182, 183, 184, 185, 186, 187, 188, 200, 174, 175, 176, 177, 178, 179, or any of said land scrip? If yea, state the numbers of said land scrip, amount, and time you sold and transferred the same particularly.

Ans. I sold to him and delivered as aforesaid Nos. 3, 5, 6, 7, 31, 32,

34, 35, 36, 177, 178, 179, 176, 182, 183, 184, 185, 187, 188, & 200, & 33, 29, 174, 175, 180, 181, 186. I think I sold him considerable more; I have no doubt about it; I know I sold him more. These are all the numbers which I can state this time. I think it was all sold during the year 1873, commencing in April of said year.

114 Ques. You have stated you delivered said scrip to Witter through the Colorado National Bank. Please state as definitely as you can the manner of and condition upon which the delivery was made to the said Witter by said bank.

Ans. When Mr. Witter desired 25 pieces of scrip he would send me a draft for seven hundred dollars, or amount agreed upon, in part payment thereof, on receipt of which I would send 25 pieces of scrip to said bank at Denver, and then upon said Witter's paying to the bank balance of the purchase-money at the price agreed upon, the bank was instructed to deliver, and did deliver, the scrip in such quantities as he has thus paid for.

Ques. From whom did you purchase said land scrip, and who and what officer signed it to you. State particularly all about this.

Ans. I purchased it from W. D. Blocksham, agent and vice-president and also a director of the Florida Agricultural College, who represented said college as its authorized agent for the sale of said scrip by virtue of a resolution passed by the board of directors of the same and

115 of the executive committee thereof at Tallahassee, in the State of Florida, on the 18th day of November, 1872, and the transfer thereof to me in January, 1873, being subsequently confirmed by a resolution passed by the executive committee and board of directors of said college, bearing date March 11th, 1873.

Ques. When you sold and delivered as aforesaid to the said Daniel Witter was the name of the assignee written in the assignment on the back of said land scrip, or was the said scrip assigned to you in blank and by you sold and delivered with said assignment still remaining blank as to the name of the assignee. State particularly all about it.

Ans. The scrip was all assigned to me with the name and residence of the assignee left blank, and when transferred by me to Witter the name and residence of the assignee remained blank; the transfer was made to Witter simply by delivery of the scrip. By way of explanation I would say that my contract of purchase from Blocksman was of the date of the 26th day of November, 1872, instead of in January, 1873, as above stated.

Ques. State particularly if you sold and delivered to said Dan-

116 iel Witter land scrip of said college No. 175; if yea, state when, and all the circumstances attending such sale and delivery.

Ans. I did sell to said Witter No. 175 of said scrip, sent it to the Colorado National Bank of Denver for delivery April 28, 1873, and said scrip was delivered to said Witter by said bank, and the receipt thereof acknowledged by said Witter to me, in connection with other numbers of said scrip. The name and residence of the assignee in the assignment of scrip No. 175 was left blank, as heretofore stated.

(Signed) G. F. LEWIS.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

I, Earl Bill, clerk of the circuit court of the United States within and for said district, do hereby certify that the above-named Gleason F. Lewis was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed, as above set forth, was reduced to writing by George Wyman in my pres-
117 ence and under my direction, he being a proper person and not interested in the suit, and also in the presence of the said witness, and was subscribed by the said witness in my presence, and was taken at the time and place in the annexed notice specified.

I do further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of the above-mentioned suit.

{ CIRCUIT COURT OF THE NORTHERN DIST. OF OHIO, SEAL. } In witness whereof I have hereunto set my hand and the seal of the said circuit court of the United States for said northern district of Ohio this 2nd day of July, A. D. 1877.

(Signed) EARL BILL, *Clerk.*

Fees.

Clerk, writing deposition, 14 folios, @ 20c. per fol	$2 80
Issuing subpœna for witness	25
Swearing witness	10
Certifying deposition, 2 folios, @ 15c. per fol	30
Official seal	20
Postage	18
Total	$3 83
Witness' fees	$1 50

118 (Endorsed:) No 9. In the circuit court of the United States for the northern district of Colorado. United States of America vs. David H. Moffat, jr. Deposition of Gleason F. Lewis on behalf of plaintiff, opened, published, and filed by me this 7th day of July, A. D. 1877. (Signed) Edward F. Bishop, clerk.

119 And afterwards, and on, to wit, the seventh day of August, A. D. 1877, came the said complainant, by Westbrook S. Decker, esq., attorney of the United States for Colorado, and G. G. Symes, esq., special counsel for the United States, and the said defendants, by Alfred Sayre, esq., their solicitor, and filed in said court and in said cause their stipulation in writing as to testimony taken and heard in case numbered 9 in this court, to be used in this cause; and the said stipulation of counsel is in words and figures as follows, to wit:

Stipulation.—Testimony taken in No. 9 to be used in this cause.

In the circuit court of the United States for the district of Colorado.

THE UNITED STATES OF AMERICA
vs.
DAVID H. MOFFAT, JR. } No. 9.

and

THE UNITED STATES OF AMERICA
vs.
DAVID H. MOFFAT, JR., AND ROBERT E. CARR. } No. 14.

It is hereby stipulated by and between the counsel for the plaintiff and defendants in the above-entitled suits that all the evidence and testimony taken in the above-entitled cause of the United States against David H. Moffat, jr., being cause No. 9 on the grand docket of the said circuit court, and consolidated with eighteen other causes, including as well the testimony, documentary and other, taken before the court, as all that taken before the master in chancery, be used and taken to be testimony in the case of the United States against David H. Moffat, jr., and Robert E. Carr, being case No. 14 on the grand docket of the said United States
120 circuit court, consolidated with seven other cases, the same in all respects as if the said evidence had been originally taken in said last-named suit.

Dated August 7th, 1877.

(Signed) WESTBROOK S. DECKER,
U. S. Attorney.

(Signed) G. G. SYMES,
Special Counsel for U. S.

(Signed) ALFRED SAYRE,
Att'y for Def't.

(Endorsed:) 14. The United States vs. David H. Moffat, jr., and Robert E. Carr. Stipulation as to testimony taken & heard in No. 9 to be used in this cause. Filed this 7th day of August, A. D. 1877. (Signed) Edward F. Bishop, clerk.

121 And afterwards, to wit, on the 15th day of October, A. D. 1877, came Henry C. F. Jenson, esq., one of the masters in chancery of this court, and filed in said court the master's report in cause numbered 9, and the said master's report is in words and figures as follows, to wit:

Master's report filed in cause No. 9, used in said cause per stipulation.

122 (Here follows two maps, marked page 123.)

124 Circuit court of the United States for the district of Colorado, in the eighth circuit. In case 9.

THE UNITED STATES OF AMERICA
vs.
DAVID H. MOFFAT, JR. }

To the honorable judges of the circuit court of the United States for the district of Colorado.

In pursuance of a decretal order of reference made and entered in the

above-entitled causes on the nineteenth day of February, A. D. 1877, by which, among other things, they were referred to me as one of the masters in chancery of this court to take the testimony of the plaintiff and defendants in this cause and to report the same, I, H. C. F. Jensen, one of the masters in chancery of this court, to whom the said matter was referred, do respectfully report, that I have been attended by the solicitors of the respective parties, plaintiff and defendants, and have examined all the witnesses which have been produced before me, and they gave the following testimony:

And the said D. WEBSTER VAN HORN, of the city of West Las Animas, in the County of Bent, State of Colorado, being of the age of thirty-nine years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy and in said proceedings in chancery aforesaid, I did carefully examine the said D. Webster Van Horn, and he did thereupon depose, testify, and say as follows, viz:

Int. 1. State your name, age, place of residence, and occupation.

Ans. My name is D. Webster Van Horn; 39 years old; residence, West Las Animas; am a merchant.

Int. 2. Do you know the parties to this suit, or each of them; and, if so, how long have you known them respectively?

Ans. I have known the United States about 39 years, and David H. Moffat, jr., about three years.

Int. 3. How long have you lived in West Las Animas, Bent County, Colorado?

Ans. Four years next fall. I have lived in the vicinity of West Las Animas nine years.

Int. 4. Have you during the time you resided in said Bent County been acquainted with most of the people living around the vicinity of said town, with the improvements and settlements that have been made from time to time on the public land lying in that vicinity?

Ans. I have.

Int. 5. Do you know the land described as the southeast quarter section No. eight (8), town'p No. twenty-three (23) south, of range fifty-two (52) west of the sixth (6th) P. M.; and the SW. ¼ of NW. ¼ sec. 8, and S. ½ of NE. ¼, & SE. ¼ of NW. ¼ of sec. 7, tp 23, range 52 west; and the SE. ¼ of NE. ¼, & NE. ¼ of SE. ¼ sec. 11, and W. ½ of SW. ¼ of sec. 12, tp. 23 S., of range 53 W.; & the S. ½ of NW. ¼, & E. ½ of SW. ¼ of sec. 12, tp. 23 S., of R. 53 W.; and the SW. ¼ of SE. ¼ & E. ½ of SW. ¼ and SW. ¼ SW. ¼, sec. 9, tp. 23, R. 52 W.; & lots 1 & 2, & the N. ½ of SE. ¼ sec 3, tp. 23, R. 52 W.; and the SE. ¼ of sec. 10, tp. 23, R. 52 W.; & L. 2 & 3, and SE. ¼ of NW. ¼ & S. ½ of NW. ¼, sec. 11, tp. 23, R. 53 W.; lots 3 & 4, & N. ½ of SW. ¼ of sec. 3, tp. 23 S., of R. 52 W.; the SW. ¼ sec. 7, tp. 23, R. 52 W.; lot 1 of sec. 5, & frac. & NE. ¼ sec. 8, tp. 23 S., of R. 52 W.; the SW. ¼ of SE. ¼ of sec. 7, tp. 23 S., of R. 52 W., & SE. ¼, NE. ¼ & E. ½ of SE. ¼, SE. ¼ sec. 12, tp. 23 S., R. 53 W.; the SW. ¼ sec. 8, tp. 23, S. R. 52 W.; the S. ½ of SE. ¼, and S. ½ of S. W. ¼, sec. 3, tp. 23 S., R. 52 W.; the NE. ¼, sec. 10, tp. 23 S., R. 52 W.; W. ½ of NE. ¼ & W. ½ of SE. ¼ of sec. 12, tp. 23 S., R. 53 W.; the SE. ¼, SE. ¼ sec. 4, & NE. ¼ of NE. ¼, and lot 1, of sec. 9,

tp. 23 S., R. 52 W.; the SE. ¼ of NE. ¼, & N. ½ of SE. ¼ & SE. ¼ of SE. ¼ of sec. 9, tp. 23 S., R. 52 W.; the S. ½ of SW. ¼ & S. ½ of SE. ¼ & NW. ¼ of SE. ¼ sec. 11, tp. 23 S., R. 53 W.; lots 3 & 4, in sec. 6, & N. ½ NW. ¼ of sec. 7, in tp. 23 S., R. 52 W.; L. 1 & 2 & NE. ¼ of SE. ¼ of sec. 4, tp. 23 S., R. 52 W.; lot 1, & N. ½ of NE. ¼ & SW. ¼ of NE. ¼ of sec. 11, & lots 1 & 2 of S. 2, in tp. 23 S., R. 53 W., L. 1 & 2 of sec. 6, & N. ½ of NE. ¼ of sec. 7, tp. 23 S., R. 52 W.; L. 2 & 3 & NW. ¼ of SW. ¼ sec. 9, tp. 23 S., R. 52 W.; with reference to where it is situated; that is, can you go upon it & know when you are there by the foregoing description?

127 Ans. I could not go to the points of the corners of the lots described, but I could find them near enough to know whether there are improvements upon them or not.

Int. 6. Were you acquainted or familiar with this land in the year 1873?

Ans. Yes, sir.

Int. 7. State particularly what you know about there having been, during the year 1873, or before that time, any improvements or settlements of any kind upon the above-described land.

Ans. In 1871 or 1872 Mr. Thomas O. Boggs had a one-story frame house about the NE. corner of sec. 11, tp. 23, R. 52 W., and on the river bank in NE. ¼ sec. 2—am not positive, it is about there—the frame 1-story building, put up by Thos. O. Boggs and used for sheep ranches. The SW. ¼ sec. 12, same tp. and range, there was a house which had stood there for a long while; it was occupied by Robert Bent and by his people. It was farming land. During the summer of 1873 there were quite a number of improvements started in sec' 8, 9, & 10, particularly on sec. 10. They were at the winter 1873 & '4 the terminus of the K. P. R. R. There was a small town established there called West Las Animas. Those were all the improvements on the above-described lands in 1873, or before.

Int. 8. State what you know about what the improvements you have mentioned were made for; i. e., with reference to whether they

128 were made by parties seeking to avail themselves of the benefits of the pre-emption laws of the United States.

A. I do not know anything about these lands—whether they were occupied for pre-emption or not.

Int. 9. How many quarter sections of land have you referred to as having improvements on in 1873 or 1874?

Ans. About sixteen quarter sections.

Int. 10. Name all the parties that you can who put improvements on the land that you have described.

Ans. George Peck & Geo. A. Brown, Charles Jones, C. W. Bowman, Saml. Shoemaker, Dr. Dennie, R. F. Long, Thos. O. Boggs.

Int. 11. Were you acquainted with most of the people and citizens living in the vicinity or upon any portion of the above-described land during the year 1873 or for several years before that time?

Ans. I was, sir; was acquainted at that time with nearly all the people living in Bent County. I was merchandising and stock-raising in that vicinity for about six years at that time.

Int. 12. How thickly settled was it in this vicinity and throughout Bent County?

Ans. It was very sparsely settled. There were very few people excepting the people living in Las Animas.

Int. 13. Did you know the following-named men or persons, or either of them, or were any of them—namely, Eli Turner, Henry D. Sampson, Jacob Linden, Arthur McLane, Philip Quinlin, Amos R. Howe,
129 Philip Johnson, Samuel A. Long, James Rogers, Samuel R. Bruce, Richard Seymour, Jas. C. Hall, Caleb Wilson, Orton Spencer, Chas. N. Clark, Michael Quinlan, Chas. R. Day, S. Sims, Anson Beck, Orson R. Peasley, Samuel Cutter, Simon D. Parker, and James Irwin—living in, or near, or upon, or in the vicinity of the foregoing-described land in the years 1873 & 1872?

Ans. I have no recollection of those parties or any of them.

Int. 14. State what you know about any of the foregoing-named persons living in or near that vicinity at any time during the year 1872, 1873, or before that time.

Ans. I have no recollection of any of the men by those names. In 1872 those lands were entirely unoccupied, except by Mr. Thos. O. Boggs, who occupied the lands as a sheep ranche.

Int. 15. State what you know about any portion of this land being occupied, improved, or settled on at any time during the year 1872 or before.

Ans. It was only occupied as settled by Mr. Thos. O. Boggs. The settlements or town sites that I have named were not made on these lands until 1873.

(Signed) D. W. VAN HORN.

Sworn to by the said D. Webster Van Horn before me, and by him subscribed in my presence, this eleventh day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
130 *Master in Chancery within and for the District of Colorado, in the Eighth Judicial Circuit of the Circuit Court of the United States of America.*

The further taking of these depositions is now here adjourned until to-morrow, Thursday, the 12th day of July, A. D. 1877, at the hour of 9 o'clock a. m.

(Signed) HENRY C. F. JENSEN,
Master in Chancery, Dist. Colorado, Eighth Judicial Circuit of the Circuit Court of the U. S. of America.

The taking of these depositions is now here resumed pursuant to adjournment, this twelfth (12) day of July, A. D. 1877, at the hour of 9 o'clock a. m. Same counsel present as of yesterday.

And the said THOMAS O. BOGGS, of the county of Bent, in the State of Colorado, being about the age of fifty-five (55) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy, or the proceedings in chancery aforesaid, I did carefully examine the said Thomas O. Boggs, and he did thereupon depose, testify, and say as follows, viz:

Int. 1. What is your name, age, residence, and occupation?

Ans. Thomas O. Boggs; age, 55 years; Bent County, Colorado; stock-raising and farming.

131 Int. 2. Do you know the parties to this suit, or either of them; if so, how long have you known them respectively?

Ans. I know Mr. Moffat, jr., since this suit commenced, and have known the United States a good while.

Int. 3. How long have you lived in or in the vicinity of Las Animas, in the county of Bent, in the State of Colorado?

Ans. I have been there off and on before it was a State or Territory, in 1844; it was then in New Mexico; and ever since it has been the Territory and the State of Colorado.

Int. 4. State how well you have been acquainted in that vicinity and in the county of Bent during the past ten years.

Ans. I think I knew most everybody in that vicinity and in the county of Bent, except in the settlements, in the towns, in 1873; there may have been some people which I did not know. I think I knew everybody in the town of Las Animas, in the county of Bent, up to 1873, when the towns were settled, & then there may have been some people in the towns West Las Animas and East Las Animas I did not know.

Int. 5. Do you know the following-described land, namely: The SW¼ NW¼ sec. 8, & S½ NE¼, & SE¼, & NW¼ sec. 7, tp. 23, R. 52 W; the SE¼ of NE¼, & NE¼ of sec. 11, & W½ of SW¼ sec. 12, tp. 23 S, R 53 W; S½ NW¼, & E½ SW¼ sec. 12, tp. 23 S, R. 53 W; the SW¼ of SW¼, & E½ of SW¼, & SW¼ of SW¼ of sec. 9, tp. 23 S, R. 52 W; lots 1 & 2, & N½ SE¼ sec. 3, tp. 23 S, R. 52 W; the SE¼ of sec. 10, tp. 23 S, R. 52 W; lots 2 & 3, & SE¼ of NW¼, & the S½ of the SW¼ sec. 11, tp. 23
132 S, R. 53 W; lots 3 & 4, and N½ SW¼ s. 3, tp. 23 S, R. 52 W; the SW¼ sec. 7, tp. 23 S, R. 52 W; lot 1 of sec. 5 & fraction, & the NE¼ of sec. 8, tp. 23 S, R. 52 W; the SW¼ of SE¼ sec. 7, tp. 23 S, R. 52 W, & SE¼ of NE¼, & E½ of SE¼ sec. 12, tp. 23 S, R. 53 W; the SW¼ sec. 8, tp. 23 S, R. 52 W; the S½ of SE¼, & S½ of SW¼ sec. No. 3, tp. 23 S, R. 52 W; the NE¼ sec. 10, tp. 23 S, R. 52 W; the W½ of NE¼, & W½ SE¼ sec. 12, tp. 12 S, R. 53 W; the SE¼ of the SE¼ of sec. 4, & NE¼ of NE¼, & lot 1 sec. 9, tp. 23 S, R. 52 W; the SE¼ of NE¼, & N½ of SE¼, & SE¼ SE¼ sec. 9, tp. 23 S, R. 52 W; the SE¼ of SW¼, & S½ of SE¼, & NW¼ of SE¼ sec. 11, tp. 23 S, R. 53 W; lots 3 & 4 in sec. 6, & N½ of NW¼ sec. 7, tp. 23 S, R. 52 W; lots 1 & 2 in NE¼ SE¼ sec. 4, tp. 23 S, R. 52 W; lot 1, & N½ of NE¼, & SW¼ SE¼ of sec. 11, & lots 1 & 2 sec. 2, tp. 23 S, R. 53 W; lots 1 & 2 sec. 6, & N½ of NE¼ sec. 7, tp. 23 S, R. 52 W; lots 2 & 3, & NW¼ SW¼ sec. 9, tp. 23 S, R. 52 W—that is, do you know where it is situated geographically?

Ans. I do know where all and every portion of it is; I have herded sheep and cattle over it for the last twenty years; and I built the first house that was ever built on it, and different corrals; I can see over all of that land, for I live on a raised eminence, and can see a good deal of land beyond it; have been living there permanently for ten or twelve years.

133 Int. 6. Now, state what you know about any person or persons having settled upon or made any improvements of any kind upon said land, or any portion of it, at any time during the year 1872, or before that time or since.

Ans. Before 1873 there was no person but myself on any part of the land. In the month of March, 1873, there were several improve-

ments made by the following persons, with the intention of holding claims in case it became Government lands: Jesus Luna, Pedro Luna, Cornelius Gilday, Wm. Walker, C. A. Boggs, Sam'l E. Shoemaker, Father Pinto, J. G. Cowen, George Peck, John Carroll, James Carter, Green McCullom, N. H. Pier, George A. Brown, and Dr. Dennie and Charles H. Bowman. These parties settled there in 1873, and most of them had an understanding with V. St. Vrain, who was the administrator of Ceran St. Vrain, that in case he got the lands he was to give them deeds; he has issued deeds to some of these parties; to Father Pinto some land was given to the Catholic Church and school by St. Vrain and the priest; Father Pinto built a good building on it; we all helped him build it; the Kit Carson children also had a claim on these lands, and I think the claim was filed in the Pueblo land office by Bradford, Chilcott & McDonnell, who, I think, were the attorneys; and there was also a claim filed by Wilbur F. Stone, as attorney for Hughes. These claims, that is the claims to

134 Father Pinto, Bowman, C. Gilday, Jesus Luna, Pedro Luna, W. Walker, and the Carson lands, and C. A. Boggs, were claimed under the Vigil St. Vrain grant.

(Alfred Sayre, esq., attorney for def't, D. H. Moffat, jr., objects to the testimony in regard to the derivative claims, and moves to expunge it, because it is not the best testimony establishing the existence of such claims.)

Int. 7. Do you know, or have you known, the following-named persons, namely, Eli Turner, George Taylor, Henry D. Sampson, Jacob Linden, Arthur McLane, Philip Quinlin, Amos R. Howe, Philip Johnson, Samuel A. Long, James Rogers, Samuel R. Bruce, Richard Seymour, James C. Hall, Caleb Wilson, Orton Spencer, Charles N. Clark, Michael Quinlin, Charles R. Day, S. Sims, Anson Beck, Orson R. Peasley, Samuel Carter, Simeon D. Porter, James Irwin, residing upon or in the vicinity of the foregoing-described land during the years 1871, 1872, or 1873?

Ans. I do not know any of them.

Int. 8. If those parties, or any of them, had lived in or around that vicinity, what were your opportunities for knowing them?

Ans. I was over the ground most every day, and did not see them; the country was not so thickly settled then but that I should have discovered them; there never were any men by such names on the land, to my knowledge.

135 Int. 9. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or matters in question in this cause? If yea, set forth the same fully and at large.

(OBJECTION.—Defendants counsel objects to the last int. for the reason that it is too general and not adapted to the examination of the witness, when counsel have full opportunity to examine the witness specifically and particularly as to the facts pertinent to the issues.)

Ans. Wilbur F. Stone and Mr. Edgerton, who is connected with the Kansas Pacific R. R., came over there. At that time there was quite an excitement as to where the terminus of the K. P. R. R. should be. Edgerton and Stone told St. Vrain that if they could get the land in that vicinity they could use their influence to have the terminus of the road at that time, which was then a short distance of the Arkansas River, established

on some part of this tract of land. One party wished the terminus to be at *at* the old town of Las Animas, the other party wished it to be on the lands above the bottom of the creek, now called West Las Animas. Several gentlemen connected with the K. P. road came to my house, in company with R. N. Moore, John W. Prowers, and rode over this
136 county to see whether it was suited for a location of a town site. The gentleman of the K. P. road, Mr. Bowen, pointed it off, NE. of my house, and said that would be a good place. I remarked to Mr. Stone that I had located some land in that bottom for the Kit Carson heirs, who claimed land under the Vigil St. Vrain grant. Mr. Stone then spoke up; Stone, St. Vrain, and Edgerton were then all three there. Mr. Stone told me that he had already filed as attorney for one Hughes, a derivative claim on the same grant he me'nt; then I asked him how persons could file on that land, as an order had been made by the land office, as was understood, that no filings could be made on any derivative claim. He then told me that he could withdraw his claim, and that then filings could be made by persons on the land.

(OBJECTION. Defendants' counsel objects to the answer last above given for the reason that the same is secondary evidence, hearsay testimony, and irrelevant.)

Int. 10. Who was the man St. Vrain, that you have mentioned?

Ans. Vicenta St. Vrain was a son of Ceran St. Vrain, and administrator of the estate of Ceran St. Vrain.

Cross-interrogatories:

137 Cross-int. 1. You speak of certain parties, one of whom desired that the terminus of the road should be at the old town of Las Animas, and the other that it should be at a point above; state what parties you mean.

Ans. Stone and Edgerton were in favor of the upper place, and the other, which we called the Craig party, of the old town.

Cross-int. 2. What were the preferences, if you know, of Vincenta St. Vrain?

Answer. He preferred the upper part.

Cross-int. 3. At the conversation you have narrated between yourself, Edgerton, Stone, and St. Vrain, was Mr. Bowen present?

Ans. He was not at that time.

Cross-int. 4. Did this conversation occur at the time you say, when Mr. Bowen visited your place with others?

Ans. I do not think he was present; he was not at my place.

Re-examination:

Question 1. Who was Mr. Bowen?

Ans. He was supposed to be some official of the Kansas Pacific R. R. I do not know what he was.

(Signed) THOS. O. BOGGS.

Sworn to by the said Thos. O. Boggs before me, and by him subscribed in my presence, this twelfth day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

138 (Signed) HENRY C. F. JENSEN,
Master in Chancery of the United States Circuit Court
for the District of Colorado, in the Eighth Judicial Circuit
of the United States of America.

And the said LUKE CAHILL, being about 27 years of age, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy and in the proceedings in chancery aforesaid, I did carefully examine the said Luke Cahill, and he did thereupon depose, testify and say, as follows, viz:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Luke Cahill; age, 27 years and six days; residence, East Las Animas; am by occupation a cattle raiser, and at present assessor of Bent County.

Int. 2. Do you know the parties to this suit, or either of them? If so how long have you known them respectively?

Ans. I know them both; have known the United States about thirteen years, and the defendant, David H. Moffat, jr., since this case commenced; I do not exactly remember the time.

Int. 3. How long have you resided at or near Las Animas?

139 Ans. It will be ten years, on the eighth day of next November. I lived directly north of West Las Animas, on the north side of the Arkansas River, about 200 or 300 yards from north side of Arkansas River, from February 20th, 1870, until the 15th day of June, 1873; from there I went to the south side of the Arkansas River, right close south ¾ miles of Fort Lyon. I served in the army, before I went to any of those places, from the 8th day of November, 1867, to the 4th day of May, 1869. I had cattle on this same land which is in dispute in this suit, in partnership with D. Webster Van Horn, from March 1st, 1870, to June 16th, 1873.

Int. 4. State how well acquainted you have been during the last three to six years in and around the town of Las Animas, and in the county of Bent, and particularly, how well acquainted you are up to June, 1873.

Ans. During the last three years I know all the tax-payers in Bent County, that is such as live there. I knew all the settlers of Bent County, pretty nearly all, some three years before that; being some six years—from 1870 to the present time; I know pretty nearly all the people in Bent County.

Int. 5. Did you hear the testimony given and the interrogatories propounded to the witnesses Van Horn and Boggs?

Ans. I heard Mr. Van Horn's and Mr. Boggs' testimony, all.

140 Int. 6. Do you know the land described in interrogatory 5 (five), propounded to Mr. Van Horn, and the int. to Mr. Boggs?

Ans. I do.

Int. 7. Do you know that land with reference to its situation geographically; that is, could you, from the description given, go upon it?

Ans. From 1870 to the present time I lived adjoining the land for over three years, and the Arkansas River divided the land I was living on and this same land. I was on the land three or four times every month ever since; I rode over the land three or four times a month, more or less, ever since I know the land.

Int. 8. State what you know about there having been any settlements made or improvements put upon said land at any time since 1870.

Ans. Thos. O. Boggs had a sheep camp, a house, and some corrals on the place, and herded sheep all over that land from 1870 up to 1873; they sheared the sheep there also. Some time in May, 1873, there were some

foundations laid of several little houses; whose they were I cannot say, except from hearsay.

Int. 9. State particularly all that you know with reference to any person or persons having settled or made improvements upon the said land at any time before the month of May, 1873.

141 Ans. I don't know of any improvements before that time except this house and corral of Boggs'.

Int. 10. Did you hear the names called in interrogatory number five (5) propounded to the witness Boggs, and the names mentioned in interrogatory number five (5) propounded to the witness Van Horn?

Ans. I did.

Int. 11. State what you know about any of these persons having settled upon or in the vicinity of this land mentioned, or of residing in or near that vicinity.

Ans. I never knew of any parties of that name in Bent County at that time or now.

Int. 12. Have you ever heard of any parties of that name, or either of those names, in Bent County?

Ans. I never heard of them, and if they were in Bent County I was bound to know it.

Int. 13. Did you hold any official position in Bent County; if so, state what office, and when it was?

Ans. I have held the position in Bent County as assessor of that county for the past three years, and hold it yet.

Int. 14. If you know anything further about these parties or the title to this land mentioned you may state it.

142 (Defendants' counsel objects to the foregoing question, for the reason that it is too general, and does not call the attention of the witness to any issue of fact in this case.)

Ans. There is something else I omitted to say. In regard to these foundations and little houses first put up there in May, 1873, they are not in existence to-day, and have not been for two years.

Int. 15. Do you know the parties who put the little houses on the land which you mention? If so, state their names, and, as near as you can, the time when they put them there.

Ans. They were put there in May, 1873; the parties I am not personally acquainted with; I have heard their names; they are citizens living around there; if I heard their names I could call them over; some of the gentlemen here, witnesses in this case, had their foundations there.

Int. 16. Did any of the parties named in the interrogatories propounded to witnesses Van Horn and Boggs put any of the houses or shanties you have referred to upon that land?

Ans. I believe they did; from my own personal knowledge I don't know.

Int. 17. I am speaking of these other parties—those named over before.

143 Ans. If you mean the individuals referred to in said interrogatories, I don't think they ever did put any buildings there.

Int. 18. State what opportunity you had to know whether or not any of the said parties referred to in the said interrogatories to Van Horn and Boggs put buildings upon said land.

Ans. I was riding over the land almost every day, and they could not have been there; if they was there I was bound to know it; I was over that land almost every day.

(Signed) LUKE CAHILL.

Sworn to by the said Luke Cahill before me, and by him subscribed in my presence, this twelfth (12th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the United States Circuit Court within and for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

And the said ROBERT K. VANDIVER, being about the age of thirty-four years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy or the proceedings in chancery in the cause above entitled, I did carefully examine the said Robert K. Vandiver, and he did
144 thereupon depose, testify, and say as follows, viz (sworn on behalf of the plaintiff):

Int. 1. State your name, age, occupation, and residence.

Ans. My name is Robert K. Vandiver; I am thirty-four years old; I keep a dining-hall on the Atchison and Topeka Railway; live in West Las Animas, Bent County, Colorado.

Int. 2. How long have you resided in West Las Animas, county of Bent, Colorado?

Ans. Well, I have resided in West Las Animas since the spring of 1874. I have lived in Bent County since 1869, before that was a county.

Int. 3. How generally acquainted have you been with the people living in Bent County since 1869.

Ans. Well, I think that up to the spring of 1874 I knew most every man in Bent County?

Int. 4. From what time?

Ans. From February, 1869, up to March 1st, 1874.

Int. 5. What was your business in that county during that time?

Ans. Well, sir, various occupations. I lived in old Las Animas from January, 1869, until 1871. I then moved up the river about 16 miles, at the upper end of this land in dispute, and remained there about two years—nearly two years. While I was in East Las Animas I was deputy county clerk and justice of the peace there. When I moved up the river I had some stock.

145 Int. 6. Did you hear the description or descriptions of the land referred to in interrogatories propounded to the witnesses Van Horn and Boggs?

Ans. I did.

Int. 7. Do you know that land from the descriptions you heard read off and written down in said interrogatories?

Ans. I don't know that I could pick out each corner of the land, but I could go over the whole of it, knowing the piece of land in dispute, as I have traveled over the land off and on since 1869.

Int. 8. Do you know where it is situated geographically sufficiently to enable you to go upon it and pass over it, or any portion of it?

Ans. Yes, sir.

Int. 9. State what you know about there having been any settlements made upon or improvements put upon the said land at any time from 1870 up to the summer of 1873.

Ans. All the improvements there was on the land up to that time was a small frame house owned by Thomas O. Boggs and some little foundations that were put there in May, 1873. There was no other improvements on the land except these I have mentioned.

146 Int. 10. State fully your opportunities from 1870 to the summer of 1873, or since, for knowing who, if any one, lived upon or improved any portion of said land.

Ans. Well, I have been over the land, have been over it a great many times; in fact while I lived upon the ranch I used to pass down to East Las Animas over the same land every week, sometimes two or three times a week; and there was no improvements there, and never had been any up to the time that town was started there except what I have mentioned.

Int. 11. State what you know, if anything, about any improvements or settlements having been put or made upon the said land or any part of it during the summer of 1873.

Ans. Well, in the spring of 1873—May—I went to Pueblo and preempted a piece of land on the upper edge of this claim I told you about. The land at that time had always been considered a derivative claim under Hughes; that was the reason there was no houses built on it before. Mr. George Peck and other parties asked me when I went to the land office to prove up on the place to see how the land lay, so as to file a pre-emption on a certain piece, and they would build a foundation upon it. I made enquiries when at the land office, and they told me that

147 this was still a derivative claim—this was the 23d day of May, 1873, that I was at the land office—and that there could no filings made on this land. I returned to old Las Animas and told Mr. Peck, but during that time he had put up a foundation; probably there was 4 or five foundations put up while I was gone, little foundations of frame; and after they had put up these foundations several other parties, Mr. Cohn, and George A. Brown, and Mr. Shoemaker, and Dr. Deney, and other parties had built little shanties round over the land. I think it was some time in June they built them.

(Defendants' counsel object to the foregoing answer, and moves that it be stricken out, for the reason that the same is irrelevant, and gives hearsay and secondary testimony, and is not responsive to the questions asked.)

Int. 12. Who, if any one, did you enquire of at the land office, or from whom did you get your information in regard to that land being covered by the Hughes derivative claim?

Ans. Well, sir, I got it generally from all of them, I may say.

Int. 13. Give the names.

Ans. One of them was Mr. Williams, the clerk in the land office, another Mr. Stanton, and another Mr. Cook.

Int. 14. Now state what conversation you had with Williams,

148 Cook, and Stanton regarding this land being covered by a derivative claim at the time when that conversation took place.

(Objected to by defendants' counsel for the reason that it calls for a conversation not between the parties to the suit or either of them and this witness.)

Ans. I think about the 21st (twenty-first) of May, 1873, I received a letter from Wilbur F. Stone, telling me if I wanted to hold the land or save it I had better come to Pueblo, and the probability was it was outside of this limit of the land. I went to Pueblo, and went to the land office and saw Williams and Stanton. I explained the matter to them, and told them I heretofore thought my claim was in this derivative claim of Hughes, but that I saw that the filings of the land office had only covered one 80 of the land, and I asked Stanton what I should do about it. I explained the matter to him as thoroughly as I could. I went there for the purpose of pre-empting this piece of land of mine, 160 acres of it. I told him that I understood the reason it had not been covered by the derivative claim was that the land-office fee of fifty dollars had not been paid, and that I was willing to pay it. He said it was not necessary; that the claim had been filed by Wilbur F. Stone, and that I could
149 go home contented, and my land could not be touched by anybody. So I went down town and saw the parties I went to the land office with, and told them I was ready to go home next morning; but in the evening afterward I went up and saw Wilbur F. Stone, and stated what I had said to Mr. Stanton, and his replies to me. He said the best thing I could do would be to come 'round in the morning, and that he would go with me to the land office and look into it. I went around in the morning, and Mr. Stone went with me to the land office. In the land office we saw Cook, and they went into the other room and had some conversation together, and then brought out the plat of this land and showed it to me with the lines marked on it, as I said before, with all this land of mine thrown out but this eighty acres. I asked them how that was, and they said that the lines had been drawn through mistake, and had not covered my land, and told me that I could pre-empt 160 acres, and file on the other 160 by leaving out this 80 acres. Part of this land I did not want, and on the plat showed a piece of land of 49 acres that I had always claimed, and had a cabin on. There was a filing made on that land by Philip Lander as a homestead. I showed it to the gentlemen and asked them how it was that Lander could file on this land that
150 I had always claimed, and I could not touch it. They told me that it was done through mistake, and that he, Lander, would have to withdraw his claim or lose his filing fees on the land, and told me to state to the gentlemen to that effect. This 80-acre plot I gave up, and took a piece of land in order to get the amount that I wanted.

Int. 15. Did you hear the names of the parties called contained in the interrogatory number thirteen (13) propounded to the witness D. Webster Van Horn, and in interrogatory number seven (7) propounded to the witness Boggs?

Ans. Yes, sir; I heard the names.

Int. 16. State what you know about any of the said named parties having made any settlement upon or put any improvements upon the said land you have mentioned, or any portion thereof, at any time.

Ans. There never was any improvements put on the place, the land mentioned, by any one of these parties, excepting those I have mentioned before.

Int. 17. Did any of these parties named ever live or settle upon or near this land?

Ans. Well, sir, I am satisfied they never did. I think I know, or did know at that time, every settler in Bent County; there might have been a few Mexican names I could not remember, but none on that land.

151 Int. 18. Did you ever have any conversation with the defendant Mr. Moffat, or with the receiver, Cook, or the register, Stanton, or the clerk in their office, Williams, regarding any filing upon or entry of any portion of this land mentioned in your deposition, other than what you have stated as having with Cook, Stanton, and Williams at this time?

Ans. I never had, sir.

Int. 19. Have you held in Bent County any official position? If so, state when and the office you held.

Ans. I was deputy county clerk and justice of the peace. That was in 1870.

Int. 20. Do you Mr. Edgerton or Mr. Carr, officers of the Kansas Pacific Railway?

Ans. Yes, sir; I know them both.

Int. 21. Did you ever have any conversation with them, or either of them, regarding the pre-emption or entry or ownership of any portion of this land mentioned?

(Objected to by defendants' counsel for the reason that it calls for conversation with Mr. Edgerton, who is not a party to this suit.)

Ans. No, sir; I never had any conversation with Mr. Carr. Mr. Edgerton asked me or tried to persuade me to locate in this new town of West Las Animas. I said to him, "How can we get a title to the lots there?" That was before this matter had been brought out. I

152 told him I did not want to build unless I was sure of the title. And his reply to me was simply this: "You go on and build. I will assure you that you will be safe. We will get a title, if we have to get it through a nigger." And that is about all there was said between us.

(Answer objected to by defendants' counsel for the reason that it states irrelevant facts.)

Int. 22. State the time that this conversation occurred, and where.

Ans. It occurred in the town of West Las Animas, I think some time along in October; I forget the exact date; sometime in October, 1873.

Int. 23. If you know anything more regarding the settlement upon or improvements put upon this land, or regarding the parties that you have been speaking about connected with the matter, you may state it.

Ans. There is nothing that I can tell from my own personal knowledge.

(Signed) ROBERT K. VANDIVER.

Sworn to by the said Robert K. Vandiver before me and by him subscribed in my presence, this twelfth (12th) day of July, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery of the United States Circuit Court within and for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

The further taking of these depositions is now here discontinued until Friday, the 13th day of July, A. D. 1877.

153 Friday, July 13th, 1877, at the hour of 9 o'clock a. m., the taking of these depositions is now here resumed.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the U. S. Circuit Court.

And the said G. M. WOODWORTH, of the town of West Las Animas, Bent County, State of Colorado, of the age of 37 (thirty-seven) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy or the proceedings in chancery aforesaid, I did carefully examine the said G. M. Woodworth, and he did thereupon depose, testify, and say as follows, viz (sworn on behalf of plaintiffs):

Int. 1. State your name, occupation, age, and residence.

Ans. G. M. Woodworth; thirty-seven years old; livery business; West Las Animas, Bent County, Colorado.

Int. 2. How long have you resided at West Las Animas, in Bent County, Colorado?

Ans. Resided in Bent County since March, 1873.

Int. 3. How well acquainted have you been in that county, and particularly in the vicinity of Las Animas, since that time?

Ans. I think I know every person in the vicinity of Las Animas since that time.

154 Int. 4. Did you hear the descriptions of the land called over which is in the interrogatories numbered propounded to the witnesses Van Horn and Boggs?

Ans. Yes, sir.

Int. 5. Do you know or are you acquainted with that land?

Ans. Yes, sir.

Int. 6. How long have you known that land?

Ans. Since the last part of April, 1873.

Int. 7. State what you know about there having been any settlement upon or improvements put upon said land in April, 1873.

Ans. I passed over that land first in the last part of March, 1873; there was no improvements on it at all, except two sheep ranches belonging to Thomas O. Boggs. I went on to that land with some emigrants or land-buyers or land-viewers the last part of April, 1873; there was still no improvements on it except that of Boggs' two shanties; I went all over it.

Int. 8. Do you know of any improvements having been put upon said land or settlements during the last part of April or in the month of May, 1873? If so, state what improvements, and who put them there.

Ans. Mr. George Peck made improvements the last part of May, I think, in section nine; George A. Brown, in section ten; S. E. Shoe-
155 maker, in section ten; Dr. Deney, in section ten; John Carrol and a Mr. Peir, both on one quarter in section ten; John W. Cowan, in section three; I won't be certain about that section, but it was north of section ten; Erastus Smith, adjoining quarter to Mr. Cowan; Ed. Shear, I think, in section three, and Charles P. Leap, I think, in section three, but not certain; there was a Catholic priest located a quarter about that time, I think a little later perhaps than these, I don't know in what section; William R. Walker, section eight or nine, I am not positive; C. Gildy, in section eight, I think; that is all the parties I remember that had foundations there in May and June.

Int. 9. State what you know, if anything, about these improvements remaining there; how long they remained, or how long the parties remained upon the land, if at all.

Ans. The most of the parties remained there for a year; however, some of the buildings were never completed; the men who owned the foundations on the land lived in town; others were finished and men lived there and occupied them; some are occupied yet.

Int. 10. Did you hear the names called over which are contained in interrogatories numbered propounded to the witnesses Van Horn and Boggs in this case?

156 Ans. Yes, sir.

Int. 11. State what you know, if anything, about these parties, or any of them, having made any settlement upon or put any improvements the said land or any portion of it at any time.

Ans. I am satisfied that there were no parties of that name in Bent County, or in that part of Bent County, after the first day of April, 1873, nor have there been to the present day.

Int. 12. State what opportunities you had to know whether or not such parties lived in or near that vicinity or made any improvements or settled upon said land.

Ans. I owned the only livery stable in April, May, & June, 1873; consequently was called upon to furnish teams to view that land by all newcomers that came into the county, and part of the time drove the teams myself, in order to gain information about the lands. I have been on every quarter-section of the land as early as July, 1873; have been at most of the corners with different parties, and have furnished most of the teams to haul the lumber to build these foundations, by the parties I have named.

Int. 13. Do you know David M. Edgerton?

Ans. Yes, sir.

Int. 14. How long have you known him?

Ans. Since sometime in May, 1873.

157 Int. 15. Did you have any conversation with him in May or June, 1873, regarding this land?

Ans. No, sir. I have later, at a later date.

Int. 16. Did you have at any time any conversation with him regarding this land? If so, state when and where it was and what was the conversation.

(Defendants' counsel objects to the question for the reason that it calls for a conversation not between the parties in this suit.)

Ans. Sometime in August, 1873, before the town was laid out, but when it was proposed to be laid out, Mr. Edgerton proposed to me to move my stable from East Las Animas to what was then called the "new town," without a name. I told him I did not like to move, from the fact I did not think I could get any title to the land. He told me to go on and move, and if they had not already the title they would get it; that he would guarantee me that my lots should not cost me anything.

Int. 17. Who did he mean by "they?"

Ans. I understood him to mean the K. P. Railroad Company, from the fact that he was there doing the principal business that was done for the K. P. Company at that time. He mentioned no names, and the understanding was that was a town laid out by the Kansas Pacific Railway Company, or was to be laid out; it was not laid out then.

158 Int. 18. What position in connection with that railway company, or its officers, did Mr. Edgerton hold at that time?

Ans. Private secretary to Mr. Carr, president of the road.

(Signed) G. M. WOODWORTH.

Sworn to before me by the said G. M. Woodworth, and by him subscribed in my presence, this thirteenth (13th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,

Master in Chancery within and for the District of Colorado, in the Eighth (8th) Judicial Circuit of the Circuit Court of the United States of America.

And the said GEORGE PECK, of the town of Las Animas, county of Bent, State of Colorado, being about the age of forty-one (41) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy or the proceedings in chancery herein above entitled, I did carefully examine the said George Peck, and he did thereupon depose, testify, and say as follows, viz:

George Peck sworn on behalf of the United States.

Int. 1. State your name, age, residence, and occupation.

159 Ans. My name is George Peck; age, 41; Las Animas; farming and dairying.

Int. 2. How long have you resided in or near West Las Animas?

Ans. Since about the middle of April, 1873.

Int. 3. Do you know the parties to this suit, or either of them? If so, state how long you have known them, respectively.

Ans. I am not personally acquainted with Mr. Moffat, the defendant; I have known him in connection with this suit since the suit was commenced. I have known the U. S., say, thirty-five years.

Int. 4. State how well acquainted you have been since 1873 and were during the summer of 1873 in and around the vicinity of Las Animas with the people.

Ans. I was acquainted with most of the people living in that vicinity during the summer of 1873.

Int. 5. Did you hear the descriptions of the land called over contained in interrogatories numbers five (5) propounded to the witnesses Boggs and Van Horn, and referred to in the evidence of the other witnesses in this case?

Ans. I did.

Int. 6. Do you know that land from its description?

Ans. I do.

160 Int. 7. Do you know its situation geographically well enough to enable you to go upon it or across it?

Ans. I do.

Int. 8. Did you know it in the spring of 1873?

Ans. I did.

Int. 9. State what you know about there having been any improvements put upon or settlements made upon the said land, or whether there were any before the months of April, May, or June, 1873.

Ans. I was on the land and passed it occasionally until the 22d of May, 1873, when I looked it over carefully with a view of settling upon it, and up to that time I never saw any improvements upon the land except those of Mr. T. O. Boggs, which consisted of a small house, occupied by his herders, and a camp, also occupied by them, and a few corrals for his sheep. On the 23d day of May I commenced some improvements; also my brother, C. D. Peck; and within a few days thereafter there were several other parties took up land and commenced improvements—Samuel Schumaker, Dr. Denny, George A. Brown, and one Pier, on sec. 10; Mr. Cowan, Chas. Leach, in sec. 3; there were others or one other in sec. 3, but I have forgotten who claimed it; it was some party living
161 there; C. D. Peck, in sec. 4; C. W. Bowman, Wm. Walker, S. R. Machlin, and myself, in sec. 9; I cannot be positive about the sections of the other settlers. There was one who has slipped my mind, Simpson was his name, and C. Gildrey, of these settlements; I am not sure about the sections. There were two other houses above built by parties with whom I was acquainted, but their names I have forgotten. Later in the summer a Catholic priest built a house on sec. 4. That is all that I believe that I remember.

Int. 10. Have you stated the date when these buildings were put up?

Ans. I stated the date I commenced improvements; these improvements were commenced from the 25th of May until the 1st of July, 1873; some were in process of building during the summer.

Int. 11. Did you hear the names called over included in the interrogatories seven (7) to Boggs and in thirteen (13) to Van Horn, propounded to the witnesses Boggs and Van Horn, and referred to in the testimony of the other witnesses?

Ans. I did.

Int. 12. State what you know about whether or not there were any such persons living in or near or upon this land at any time during 1872 or 1873 or since.

Ans. I have never known any parties by any of those names.

162 Int. 13. State what your opportunity was for knowing whether or not any such person made any settlements upon or put any improvements upon this land in controversy.

Ans. I was over the land very frequently after the 22d of May, 1873, and I am satisfied there were no improvements by any parties bearing those or any of those names.

Int. 14. State what you know about the character of any improvements you have mentioned as having been put upon that land in the spring or summer of 1873, and what became of those improvements?

Ans. The most of them were small, cheap houses; some of them are standing yet; most of them were left standing during the summer, but taken down in the fall of 1873.

Int. 15. If you know anything further particularly relating to the settlement or improvement of this land mentioned, or of the parties named and referred to as being in the interrogatories to Boggs and Van Horn's deposition, you may state it.

Ans. There is nothing more, I think, except the settlement of the town.

Int. 16. You may state anything you know particularly relating to the settlement upon any portion of this land covered by the town
163 of West Las Animas, and when these settlements were made.

(Counsel for def't objects to as irrelevant.)

Ans. The town was laid off on section 10, I think, during the month of September, 1873, and buildings commenced in the town in the latter part of Sept., 1873, as well as I recollect, and a great many buildings were put up during the fall and winter.

Int. 17. State anything you may know about the ownership or claimant of land upon which the town was laid out.

Ans. The land was claimed by George A. Brown, as a settler; but was also claimed or patents were recorded by David H. Moffat, or town company; I am not positive which.

Int. 18. Did you ever have any conversation with any of the officials of the K. P. Railway Company, Mr. Carr or Mr. Edgerton, or others, in relato that town site, or the ownership or title of the land upon which it was situated?

Ans. I did not.

Int. 19. Did you buy any lots in that town site?

Ans. I did not.

Int. 20. Did you have any given you to put buildings on?

Ans. No, sir; I never had any there.

X-examined:

164 X-int. 1. How do you know the patents of the town site were recorded by David H. Moffat, for the town com.?

Ans. I saw it on the county clerk's record.

X-int. 2. You mean to say that you saw the patents recorded?

Ans. I saw the record.

Int. 3. That is, all you know about it is that you saw spread on the record what purported to be a record of patents to the town site?

Ans. Yes, sir.

(Signed) GEORGE PECK.

Sworn to by the said George Peck before me, and by him subscribed in my presence, this thirteenth (13th) day of July, in the year of our Lord one thousand eight hundred & seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery within and for the District of Colorado, in the Eighth (8th) Judicial Circuit, of the Circuit Court of the United States of America.

And the said ALLEN E. CARPENTER, of the town of Las Animas, county of Bent, State of Colorado, being of the age of thirty-one (31) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters of controversy, I did carefully exam-
165 ine the said Allen E. Carpenter, and he did thereupon depose, testify, and say as follows, to wit:

Allen E. Carpenter sworn on behalf of the United States.

Int. 1. State your name, age, occupation, residence.

Ans. Allen E. Carpenter; contractor and builder; age, 31; Las Animas.

Int. 2. How long have you resided in West Las Animas?

Ans. Since the last of October, 1872.

Int. 3. How extensive or how well have you been acquainted with the people living in or near West Las Animas during the years 1872, '3, & '4?

Ans. In the year 1872 I was a stranger; during the early part of the year 1873 I became acquainted with a great portion of the people in that vicinity.

Int. 4. What business were you in then?

Ans. The same as at the present time—contractor and builder.

Int. 5. Did you hear the description of the land called off described and mentioned in interrogatories numbered five (5) in Van Horns' and Boggs' depositions, and referred to in the testimony of the other witnesses in this case?

Ans. I heard those to Mr. Boggs.

Int. 6. Do you know that land?

Ans. Yes, sir; I do.

Int. 7. Do you know where it is situated geographically with sufficient definiteness to enable you to go upon it and to tell whether or not there were buildings upon it at any time?

166 Ans. Yes, sir.

Int. 8. State what you know about there having been any settlements upon or improvements upon said land during the years 1872 or 1873.

Ans. There were two small cabins in the fall of 1872—Mr. Boggs' sheep camp—his two sheep camps—in the fall of 1872—was all there was on that land at that time.

Int. 9. Now state what improvements there were put upon that land at any time during the year 1873, if any.

Ans. There was some improvements made during the year 1873, by different parties, the first of which was in June. However, in July was the first buildings that I saw in progress of construction. I think foundations were laid before, and during the months of July and August there were small houses built on every quarter section of this land—at least started if not completed.

Int. 10. State the names of all the persons you can who settled upon or put improvements upon that land during the summer of 1873.

Ans. George Brown, Sam. Shoemaker, one man by the name of Pier, John Cowan, Ed. Shear, Charles Leach, George Peck, Charlie Peck, Charles Jones, Ed. Jones, and a man by the name of Macklin, Erastus Smith, Cornelius Gilday, Romain. That is all I can think of.

167 Int. 11. Did you hear the names called over which are mentioned or contained in interrogatories numbered thirteen (13) to Van Horn and seven (7) of Boggs, of the witnesses Boggs and Van Horn, and referred to in the testimony of the other witnesses heretofore given in this case?

Ans. I did.

Int. 12. State what you know about there having been any such parties living in or near the vicinity of this land, or whether or not they ever made at any time any settlements or improvements upon said land.

Ans. I never knew such parties at that time or since.

Int. 13. State what opportunity you had for knowing whether such parties lived there in or near the said land, and whether or not any of them settled upon or put any improvements upon the said land.

Ans. I was over that land frequently during the summer of 1873, in the month of July, and from that time on. I was on this land frequently, and saw no indications of such parties ever having been there. These improvements which I mention are those aside from the improvements made upon the town site.

(Signed) ALLEN E. CARPENTER.

Sworn to by the said Allen E. Carpenter before me, and by him subscribed in my presence, this thirteenth (13th) day of July, in the
168 year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery within and for the District of Colorado, of the Circuit Court of the Eighth (8th) Judicial Circuit of the United States of America.

And the said CHARLES W. BOWMAN, of the town of Las Animas, Bent County, in the State of Colorado, being of the age of thirty-seven (37) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters of controversy, I did carefully examine the said Charles W. Bowman, and he did thereupon depose, testify, and say as follows, to wit:

Charles W. Bowman sworn on behalf of the United States.

Int. 1. State your name, age, residence, occupation, and how long you have lived at Las Animas.

Ans. Charles W. Bowman; 37 years of age; journalist; lived at Las Animas since April, 1873.

Int. 2. How well have you been acquainted or how general has your acquaintance been with the people living in and in the vicinity of Las Animas during 1873 and since?

Ans. In 1873 I was a stranger. I gradually made acquaintances
169 as fast as possible. I was well acquainted in the town a short time after coming there—a few days.

Int. 3. What proportion of the people living in and around Las Animas were you acquainted with or did you know during the months of May, June, & July, 1873?

Ans. I knew probably a majority of them.

Int. 4. Did you hear the descriptions of the land called off which is contained in the interrogatories propounded to the witnesses Van Horn and Boggs, and referred to in the testimony of the other witnesses in this case?

Ans. I heard it called off to Mr. Van Horn.

Int. 5. Do you know that land, that is, where it is situated geographically?

Ans. I do.

Int. 6. Do you know the geographical situation of that land with sufficient definiteness to enable you to go upon it and over it?

Ans. Yes, sir.

Int. 7. State what you know about any settlements or improvements that had been made or put upon said land when you first knew it in April or May, 1873.

Ans. When I first saw the land there were few if any improvements upon it.

Int. 8. State the time when that was.

170 Ans. It must have been May or June; I am not *not* sure when I first drove over it.

Int. 9. State as near as you can all the improvements that was on that land at the time when you first knew it.

Ans. In the month of August, 1873, when I went over the land, I saw improvements by Mr. Macklin, I think, Mr. Brown, Mr. Peck, Father Gasparri, and there were some other foundations, but I did not know the ownership.

Int. 10. State particularly all the improvements or settlements that you know of on the said land in the month of April, May, June, or July, or August, 1873.

Ans. I personally knew of no improvements previous to August; however, parties were going up there to make improvements during the spring at various times. I have already stated what improvements were made in August. I laid a foundation myself in August.

Int. 11. Did you hear the names called off contained in the 13th inter. to Van Horn and in the 7th inter. to Boggs, interrogatories propounded to the witnesses Van Horn and Boggs, and referred to in the testimony of the other witnesses?

Ans. I did.

Int. 12. State what you know about whether or not there were any such parties living upon or in the vicinity of this land during the year 1873 or since?

171 Ans. I did not know of any such parties at that time or since.

Int. 13. State what opportunities you had to know any parties that might have settled upon or put improvements upon this land during the summer of 1873.

Ans. My opportunities were good: first, because I was a journalist and felt an interest in the settlement of the county and any parties that came in to settle; second, there was a great deal of talk about that fine piece of bottom up there, and a great many went up there, back and forth, to see it.

Int. 14. Do you know anything about any deeds or patents for the land in dispute having been brought to the recorder's office of Bent County for record? If yea, state what knowledge you have regarding these deeds and patents, if any.

Ans. I know of them, know of certain patents and deeds covering this land. The recorder's office was opposite my own in Las Animas, and I went into the office one afternoon and saw him engaged recording quite a package of them. A gentleman was there in waiting. I had a curiosity to see the deeds at that time, but I do not think I had opportunity to look at them just then. I afterwards took a memorandum of the patents and the deeds from the clerk. I am not sure whether I took it directly

172 from the deeds or from the records. As near as I can recollect there were seven patents brought this time. There were deeds from the patentees to persons by the name of Harris and Perry and from them to D. H. Moffat, jr.

Int. 15. How did you obtain your knowledge regarding these deeds and patents?

Ans. I obtained my information from the county clerk. He communicated with me freely on the subject. I should say the deputy county clerk. Richard Simpson was his name.

Int. 16. Who was the county clerk at that time?

Ans. He did the work at the office.

Int. 17. But who was the county clerk?

Ans. John M. Boggs.

Int. 18. Did you know who brought these patents and asked to have them recorded?

Ans. One of two men, Hutchins or Hedge. They were a firm. I had seen them both, but did not know them well enough to say which one it was at that time. I know now it was Mr. Hutchins.

Int. 19. State what you know with reference to whether these papers were left there for record or whether they remained in the custody of the party bringing them until they were all recorded and then taken away by the party.

173 Ans. The person bringing them was in the office a portion of the time. He remained in town until the recording was entirely done. The clerk worked late to get it done, so that he could take them with him.

Int. 20. Do you know or are you acquainted with David H. Moffat, jr.?

Ans. I am not personally acquainted with him.

Int. 21. Do you know whether the clerk was paid any extra compensation for working continually until late at night, as you have stated, in recording the deeds and patents you have mentioned?

Ans. Not of my own knowledge.

(Signed) CHARLES W. BOWMAN,

Sworn to by the said Charles W. Bowman before me and by him subscribed in my presence this thirteenth (13th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery within and for the District of Colorado, of the Circuit Court within and for the Eighth (8th) Judicial Circuit of the United States of America.

The further taking of these depositions is now here continued until tomorrow, Saturday, July 14th, 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the U. S. Circuit Court.

The taking of these depositions are now here resumed on Saturday, the 14th (fourteenth) day of July, A. D. 1877, at 9 o'clock a. m.; same counsel present as yesterday.

174 (Signed) HENRY C. F. JENSEN,
Master in Chancery for the U. S. Circuit Court.

And the said JOHN CARROLL, of West Las Animas, Bent County, State of Colorado, being of about the age of thirty (30) years, and having been by me first duly cautioned and sworn to testify to the truth, the whole

truth, and nothing but the truth in the proceedings in chancery and in the matters of controversy, I did carefully examine the said Charles W. Bowman, and he did thereupon depose, testify, and say as follows, viz:

John Carroll.

Int. 1. State your name, age, occupation, and residence.

Ans. John Carroll is my name; thirty years old; I am a railroad man; I live in Bent County, West Las Animas, Colorado.

Int. 2. How long have you resided in Bent County, Colorado?

Ans. First of next month four years.

Int. 3. Do you know the parties to this suit or either of them?

Ans. I know the United States; I know Mr. Moffat by sight.

Int. 4. How generally have you been acquainted with the people living in or near the vicinity of Las Animas during the past four years, and particularly how well acquainted were you in that vicinity during the years 1872 & 1873?

Ans. I was not there in 1872 at all. I came there August first,
175 1873. From that time on I was very well acquainted with the people that lived in Las Animas.

Int. 5. Did you hear the descriptions called off of the land mentioned and described in interrogatories five (5) propounded to the witnesses Boggs and Van Horn in this case?

Ans. I did, sir.

Int. 6. Do you know that land from the descriptions given of it in those interrogatories?

Ans. I am well acquainted with the land, but not well enough acquainted with it to pick it out by sections or quarter sections.

Int. 7. Do you know where it is situated geographically?

Ans. I do.

Int. 8. Do you know with sufficient definiteness from the descriptions to enable you to go upon it?

Ans. Yes, sir.

Int. 9. When did you first know that land?

Ans. I first knew that land when I came across it in August, 1873, and I have lived around there ever since.

Int. 10. State what you know about any settlements having been made on or any improvements put upon that land or any portion of it during the summer of 1873.

Ans. Well, sir, I never knew of any only the ones that have been put there by the men who claimed the land; that is, the settlers that claimed the land.

176 Int. 11. State who these settlers were, and when the improvements you refer to were put there?

Ans. To the best of my knowledge, they were put there from the first of August until about the first of September; it might have been a little later. Sam. Shoemaker, John Cowan, Smith, A. E. Carpenter, George Peck, and John Pier—I bought his claim-house afterwards; Dr. Deney, Macklin, Romain, Ed. Shear, George A. Brown, and others. I can't just think of their names.

Int. 12. Did you hear the names called off contained in interrogatories thirteen (13) and seven (7), propounded to the witnesses Van Horn and

Boggs, and referred to in the testimony of the other witnesses in this case?

Ans. I did, sir.

Int. 13. State what you know about any of the parties there named having ever settled upon or put any improvements on the said land in dispute.

Ans. I never did know them, or know of any improvements they put on that land.

Int. 14. Did you ever know of any such parties having lived on or in the vicinity of said land?

Ans. I never did.

Int. 15. Were there any improvements on that land when you first knew it?

177 Ans. There was not.

Int. 16. If you know anything further regarding the settlement upon or improvements on said land mentioned, or anything in relation to the parties named in the interrogatories you have been referred to, you may state it.

Ans. I do not.

(Signed) JOHN CARROLL.

Sworn to by the said John Carroll before me and by him subscribed in my presence this fourteenth (14) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the District of Colorado, for the Circuit Court of the Eighth (8th) Judicial Circuit of the United States of America.

And the said LINUS E. BOOMER, of the town of West Las Animas, in the county of Bent, State of Colorado, being of the age of thirty-one (31) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the proceedings in chancery and in the matters of controversy in the above-entitled cause, I did carefully examine the said Linus E. Boomer, and he did thereupon depose, testify, and say as follows, viz:

178 *Linus E. Boomer.*

Int. 1. State your name, age, occupation, residence.

Ans. Linus E. Boomer; 31 years of age; contractor and builder; residence, West Las Animas, Bent County, Colorado.

Int. 2. How long have you resided in or near Las Animas?

Ans. Nine years.

Int. 3. How generally acquainted have you been in that vicinity during the past nine years, and particularly how well acquainted in Las Animas and in that vicinity, and in Bent County, during the years 1872 & 1873?

Ans. I was acquainted with nearly all the settlers of Bent County during those years.

Int. 4. Did you hear the description of the land given which is contained in interrogatories numbered five (5) , propounded to the witnesses Van Horn and Boggs in this case?

Ans. Yes, sir; a good portion of it.

Int. 5. Do you know the land contained in those descriptions from hearing the descriptions called off?

Ans. I do, sir.

Int. 6. How long have you known that land?

Ans. I have known that land since 1869.

179 Int. 7. Do you know the geographical situation with sufficient definiteness to enable you to go upon it, or most any portion of it?

Ans. Yes, sir.

Int. 8. State what you know about there having been any settlements made upon or improvements put upon that land during the year 1872?

Ans. In the year 1872 there was two small shanties on the land belonging to Tom Boggs. He had sheep camps there. That is all the improvements there was at that time during the year 1872.

Int. 9. State what you know about there having been any settlements made or improvements put upon the land in 1873.

Ans. In 1873, during the months of June, July, and August, there were several claim-houses put onto the land by personal acquaintances of mine.

Int. 10. State who those parties were that put the improvements on the land at that time.

Ans. John Pier, Sam. Shoemaker, George A. Brown, Charlie Jones, Ed. Jones, a man by the name of Roumain or Romain, John Cowan, Rat. Smith, E. A. Carpenter. I am not sure that his land lies on *on* that; it is a tract of land lying right joining. There is a firm that I can't remember their names.

Int. 11. What became of the improvements put on the land by

180 these parties, or of the parties, with regard to how long they lived upon it?

Ans. Well, some of them reside on it now; some of them resided on it a year; some of them, I think, left their claims in less time than that. I believe one or two sold out their claims to Mr. Moffat, but that is only by hearsay. I don't know that they did sell to him.

Int. 12. Did you hear the names called off contained in the interrogatories thirteen (13) and seven (7) propounded to the witnesses Boggs and Van Horn in this case, and referred to in the testimony of the other witnesses herein; and, if so, state what you know about any of the said named parties having made any settlements upon or put any improvements on the land in dispute, at any time?

Ans. I heard the names, yes, sir. I have never seen any men in the county, bearing those names. I know that there has been no improvements put upon that land by any people that went by those names.

Int. 13. Do you know anything further relating to these lands in controversy, or the settlements or improvements made on it, or relating to the parties just named, in regard to their making any settlements or improvements on this land? If so, you may state it.

Ans. I do not.

(Signed) LINUS E. BOOMER.

181 Sworn to by the said Linus E. Boomer before me, and by him subscribed in my presence, this fourteenth (14th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery within and for the District of Colorado, for the Circuit Court of the Eighth (8th) Judicial Circuit of the United States of America.

And the said SAMUEL A. HUTCHINS, of the city of Denver, county of Arapahoe, in the State of Colorado, being thirty-nine (39) years of age, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery, and the matters of controversy in the above-entitled cause, I did carefully examine the said Samuel A. Hutchins, and he did thereupon depose, testify, and say as follows, to wit:

Samuel A. Hutchins.

Int. 1. State your name, age, occupation, and residence.

Ans. Samuel A. Hutchins; 39 years old; residence, Denver; business, contractor—general railroad contractor.

Int. 2. How long have you resided in the city of Denver, Colorado?

Ans. Denver has been my home since 1860, but I have been absent at different times, although I considered this my home.

Int. 3. Do you know the parties of this suit, plaintiff or defend-
182 ant; if so, how long have you known them respectively?

Ans. The United States Government I am not much acquainted with. With Mr. Moffat I have a slight acquaintance, merely a passing business acquaintance. I have had business acquaintance with Mr. Moffat, I suppose I might say since 1865 or '6—some years; I don't recollect the date; some years—about that time.

Int. 4. What were you engaged in, and where were you during the years 1872 and 1873?

Ans. Well, sir, I could not tell you those years what particular place I was in, but about that date, I was engaged by the Kansas Pacific, doing some work between Kit Carson and Las Animas, but I won't be positive as to the years.

Int. 5. How were you engaged by the K. P. road as a contractor; in the ordinary sense of the term, for grading, or as an employee of the company?

Ans. Grading contractor, and track layer.

Int. 6. Were you acquainted at that time in and around Las Animas?

Ans. No, sir; I was not. Never had been there up to that time—up to the time I was grading there.

Int. 7. Did you know anything about a tract of land lying on the Arkansas River bottoms, extending from the river to the hills, just above the town of West Las Animas, Bent County, Colorado?

183 Ans. I simply know there is a tract of land there—a piece of prairie—but who it belongs to I know nothing about. I could not call sections or numbers—I am not familiar with it.

Int. 8. Did you at any time during the year 1873 take a number of deeds and patents to the recorder's office of Bent County, and have them recorded?

Ans. I carried some papers to the recorder in Bent County and had them recorded, it must have been somewher' in those years, but I could not tell whether 1872, '3 or '4.

Int. 9. What kind of papers were they?

Ans. I could not say that; I suppose they were deeds. It has been so long ago I would not say what they were. Perhaps they were deeds and patents. They were sealed and closed when I got them, and I returned them in the same way.

Int. 10. Did you take them to the recorder's office and remain there until they were recorded and then bring them away with you?

Ans. I took them to the recorder's office and remained in Las Animas until they were recorded, but not at the recorder's office. I brought them away with me.

Int. 11. How long did it take to have them recorded?

Ans. I could not say.

Int. 12. One day or two days?

184 Ans. It was perhaps longer than a day. I could not tell the exact time.

Int. 13. State, if you know, who those deeds, patents, or papers belonged to.

Ans. Well, sir, I could not tell you. They were given me by Mr. Moffat, and I returned them. I could not tell you who they were for; that is, the whole of them.

Int. 14. Who did you return them to?

Ans. I returned them to the bank. I don't think I gave them to Mr. Moffat when I came up.

Int. 15. Who sent you from here to Las Animas, or who employed you to take those papers to the county recorder of Bent County to have them recorded and bring them back?

Ans. Mr. Moffat heard by some means that I was going to Las Animas, and asked me if I would take those papers and have them recorded, which I done.

Int. 16. Did Mr. Moffat tell you anything about what those papers were?

Ans. Did not.

Int. 17. Did Mr. Moffat charge you or caution you not to leave those papers with the recorder of Bent County and come away, but to remain until they were recorded, and then bring them back?

185 Ans. Mr. Moffat said, as I was going away, that there had been some trouble with papers left for recording there, and he wished me to bring them back. There had been some records destroyed in Las Animas County that year and he seemed a little doubtful, and thougth that these might go that way. I had the town and county of Las Animas confused in my mind, and I thought perhaps it was in that county, but by making inquiries I found I was in a different county.

Int. 18. Who paid you for taking those papers there and having them recorded and bringing them back?

Ans. Mr. Moffat paid the cost of recording.

(Interrogatory repeated.)

Ans. Mr. Moffat; I can't say that either, because there was simply a credit placed to my account in the bank.

Int. 19. What was it for?

Ans. For recording and expenses.

Int. 20. How much did you pay to the recorder of Bent County for recording those deeds and patents?

Ans. I don't know.

Int. 21. Did you at the time that you paid it?

Ans. Undoubtedly.

Int. 22. Did you pay the recorder any extra compensation for recording those deeds and patents as fast as possible, and for working extra
186 hours to complete the record as soon as possible?

Ans. Nothing whatever; although I will make this statement. My business here required my early return, and I told him I would pay him if he would work extra hours rather than to have to wait there extra time.

Int. 23. State all that you can remember that Mr. Moffat said to you in regard to or in connection with the taking of those papers and having them recorded and returning them to the First National Bank.

Ans. He said he wished I would take those papers to Las Animas, and have them recorded and fetch them back. That is all the conversation I recollect in regard to the recording of the papers.

Int. 24. Did you know by information or otherwise of there being any trouble, excitement, or talk regarding the title of the piece of land in the bottom—the land that you have mentioned that you knew where it was situated at that time?

Ans. I know at the time that we were railroading there that there was talk among settlers who had made claims, or tried to make claims or something of that kind. There had been more or less talk or rumor.

Int. 25. Did you know whether or not the deeds and patents
187 you took for record conveyed or purported to convey that property situated in the bottom where the town of West Las Animas lies or along up the river above?

Ans. I supposed that those papers had some connection with the case.

Int. 26. With what case?

Ans. With the case you are taking evidence in now, I suppose; but there was no case at that time.

Int. 27. Did you know that they had any connection, or conveyed or purported to convey the title to that land mentioned?

Ans. I did not know what land. I knew it was some land they conveyed, but I could not place the land.

Int. 28. Did you suppose it to be the land mentioned in this case?

Ans. I supposed perhaps it was.

Int. 29. Why did you suppose it to be the land in controversy?

Ans. For the simple reason that when these papers were being recorded some of the citizens of Las Animas were very much surprised to think that papers should be recorded, or that there was any title or anything of the kind to that property.

188 Int. 30. Did you hear much talk or discussion in the recorder's office regarding the title?

Ans. There was some little talk.

Int. 31. What other business had you at Las Animas at that time except the taking of the deeds and patents there to have recorded?

Ans. Filing a lien upon the Arkansas Valley Branch Railway.

Int. 32. Do you know how many deeds and patents you took there?

Ans. I do not.

Int. 33. Do you know the names of the parties that the deeds purported to have been executed by?

Ans. I do not.

Int. 34. You say you cannot remember the time when this was?

Ans. I cannot place the year. It was in the fall of the year some time. It might have been earlier or later for all I know; it was so long ago.

Int. 35. Who was recorder at that time? Who recorded the papers for you?

Ans. The deputy recorder recorded the papers. John Boggs was the recorder—I do not know the name of the deputy.

Int. 36. How many papers, deeds, patents, &c., did you take to the recorder, at the time you mention, to get recorded?

189 Ans. I could not tell. They was in the package, and I could not tell.

Int. 37. Give us the best of your judgment as to whether there was fifty or five?

Ans. It looked to me like a large commercial envelope, pretty well filled—I could not say whether 10 or 100.

Int. 38. Could not you give us an idea as to whether there were 10 or 50?

Ans. I could not, for I never counted them; I don't know.

Int. 39. Couldn't you form an opinion by the amount you paid to have them recorded?

Ans. I could not do that, for the reason I do not know the cost of recording each paper or any number of papers.

Int. 40. What were your business relations with Mr. Moffat at this time that you had these papers recorded?

Ans. No business relations, excepting I was simply a depositor at his bank.

Int. 41. Were you and him interested in or operating together in any matters connected with the Kansas Pacific Railroad or land company?

Ans. No, sir; never had any interests together or was connected in any affairs, either at that time or any other, that I recollect of.

190 Int. 42. Do you know anything about whether Mr. Carr, president of the K. P. Company, or the K. P. Company, claimed to have any interest in the property covered by these deeds or patents?

Ans. I do not.

Int. 43. Do you know anything about any of the parties purporting to have executed these deeds?

Ans. I do not; in fact, I do not even know the names.

Int. 44. Were you told at that time, or any other time, anything about the parties or their connection with the property purporting to have executed the deeds?

Ans. Never was.

Int. 45. Did you ever know any man connected with that by the name of Thomas Harris?

Ans. I do not know Thomas Harris.

Int. 46. Did you ever know Henry D. Perry?

Ans. I do not know Henry Perry.

Int. 47. You say you cannot remember the amount you paid for recording those deeds and patents?

Ans. No, sir.

Int. 48. Were you instructed when you took those deeds and patents to have them recorded for Moffat, to examine into the title in any way?

191 Ans. No, sir; he said nothing to me except to record those papers.

Cross-examination:

X-int. 1. If I understood you, you gave the papers to be recorded to the deputy recorder of Bent County?

Ans. Yes, sir.

X-int. 2. At what hour of the day did you first see the deputy recorder after your arrival?

Ans. I met him at breakfast at the hotel; I was introduced to him there.

X-int. 3. You say that in time you proposed to the deputy recorder that you would give extra compensation if he would record those deeds as quickly as possible?

Ans. Yes; that was simply a matter of my own convenience. I told him my business required me to be home at a certain time, and if he would work after office hours I would pay him extra.

X-int. 4. Then it was not at the suggestion of Mr. Moffat that you made him that proposition?

Ans. Mr. Moffat never said pay extra or pay anything to me.

Redirect examination:

Int. 1. Why did you desire to bring those papers away with you?

Ans. Mr. Moffat requested me to fetch them.

192 Int. 2. And not leave them with the recorder to be mailed back in the usual course of business?

Ans. That was my instructions, to have them recorded, and return them.

Int. 3. Did Mr. Moffat give you any reasons why he must have them recorded and bring them back with you?

Ans. I think Mr. Moffat said there had been some trouble in this county in burning records, and he did not want them left. I suppose he confused the counties.

Int. 4. Had there been records burnt in Bent County?

Ans. No, sir; but I associated them together.

Int. 5. Had there been any records burned in Las Animas County?

Ans. There had been that spring.

Int. 6. I believe you stated that this was in the fall of the year?

Ans. Fall or early winter.

Int. 7. Did you have any interest, directly or indirectly, present or in prospect, in connection with this land, that these patents and deeds conveyed?

Ans. None whatever.

Int. 8. Have you any now?

Ans. None. I don't own a foot of land in Bent County.

193 Int. 9. What were your business relations with Mr. Moffat at this time?

Ans. Simply a depositor at the bank.

(Signed) S. A. HUTCHINS.

Sworn to by the said Samuel A. Hutchins before me, and by him subscribed in my presence this fourteenth (14th) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery within and for the District of Colorado, in and for the Circuit Court of the 8th Judicial Circuit of the United States of America.

The further taking of these depositions is now here adjourned until Monday, July 16th, A. D. 1877.

(Signed) H. C. F. JENSEN,
Master in Chancery.

Monday, July 16th, A. D. 1877, at 9½ o'clock a. m. The further taking of these depositions is now here resumed. Same counsel present as of Saturday, the 14th inst.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the U. S. Circuit Court.

And the said GEORGE H. HILL, of the age of thirty-eight (38) years, residing five miles east of Fort Lyon, Bent County, State of Colorado, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chan-
194 cery and the matters of controversy in the above-entitled cause, I did carefully examine *examine* the said George H. Hill, and he did thereupon depose, testify, and say as follows, to wit:

George H. Hill.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is George H. Hill; 38 years old; residence, five miles east of Fort Lyons, Bent County; my occupation at present is stock raising.

Int. 2. How long have you resided in or near the vicinity of West Las Animas, Bent County, Colorado?

Ans. About five years.

Int. 3. How long have you been acquainted in or around that vicinity?

Ans. My first visit to Bent County was in 1869.

Int. 4. How generally have you been acquainted in Bent County for the last five years; and particularly in the vicinity of and in West Las Animas?

Ans. I can say I have been well acquainted.

Int. 5. Have you heard the descriptions of the land called off contained in interrogatory five, and propounded to the witness Van Horn in his testimony given in this case?

Ans. Yes, sir; I have.

Int. 6. Do you know that land from the description that has been called off?

Ans. I do.

195 Int. 7. Do you know the description of that land geographically with sufficient definiteness to enable you to go upon it and tell where it is from the descriptions?

Ans. Yes, sir; I could with instruments.

Int. 8. State what you know about that land with reference to your familiarity with it.

Ans. I surveyed that land in 1869 for the Government.

Int. 9. Did you make plats and field notes of it when you surveyed it?

Ans. I made the rough diagram and the field notes which were sent to the surveyor-general's office.

Int. 10. Have you known that land ever since?

Ans. I have.

Int. 11. Can you point out that land on the plats or diagrams that are handed you and you now have?

Ans. I can.

Int. 12. Are these plats or diagrams now handed you correct, or do the' contain correct descriptions of the land in controversy that has been called over to you?

Ans. As near as my general knowledge goes, they appear to be correct. It would require the field notes to prove the correct make-up of the maps.

Int. 13. I now ask you to mark with red ink upon the plats you now hold a mark to identify upon those plats the particular lots,
196 forty-acre subdivisions, and the other subdivisions contained in the descriptions given of this land in controversy, which has been named over to you and contained in interrogatories propounded to the witnesses Boggs and Van Horn and referred to in the testimony of the other witnesses heretofore given in this case.

Ans. I will mark a cross with red ink on such subdivision, and I have now done so as near as possible. Van Horn's and Boggs' interrogatories conflict, and in one place it is impossible for the same number—the number ought to be changed; the south half should be the north half. Where it reads the south half of the southwest quarter of section eleven, township twenty-three south, of range fifty-three west, it should read the north half of said quarter, &c., so as to agree with the balance of the filing. The forties have got to join each other; and besides one forty of that section was already taken.

Int. 14. I will now ask you to make these plats, containing a description of this land, as you say, marked with crosses in red ink upon them, which you have made, indicate where on the plats the land is represented and which has been referred to, a part of your testimony in this case.

197 Ans. I will make the said plats a part of my deposition.

(The said plats are hereby made a part of the testimony of this witness, marked "Exhibit A" and "Exhibit B.")

Int. 15. State what you know about there having been any settlements made upon or improvements put upon the said land during the *the* year 1872, or whether there were any improvements on that land before the year 1872.

Ans. There were some improvements on that land previous to that year.

Int. 16. State what they were.

Ans. I can only recollect definitely one building on that land in 1872, or previous to 1872; it was in 1869, I remember.

Int. 17. State what you know about it in 1872.

Ans. I don't know of any other buildings being there in 1872. If there was any, I never noticed them.

Int. 18. What was your opportunity in 1872 for observing whether any improvements or settlements were made upon the said land?

Ans. Passing along the wagon road between old Las Animas and Pueblo, I passed along the south edge of that land. I should think I passed at least a half dozen times in that year.

198 Int. 18½. State what you know about there having been any settlements made upon or improvements put upon the said land during the year 1873.

Ans. In the fall of 1873, I returned there and found them building a town. I left that vicinity about the first of July and returned in October of 1873, and found parties erecting buildings in the place now called West Las Animas, on the northeast quarter of section ten and the southeast quarter of section three, township twenty-three south, of range fifty-two west.

Int. 19. State all you know of there being any other improvements upon any other portion of said land, erected in the year 1873.

Ans. I don't know of any others; during that year I never went any further up the river than the town, on that side of the river.

Int. 20. State if you are acquainted with or know any of the parties or persons named over to you contained in interrogatory thirteen, propounded to the witness Van Horn, in his testimony in this case, and the same names referred to in the testimony of the other witnesses hereinbefore in this case, or whether they lived in Las Animas, or in its vicinity, or whether any of them made any settlements or put any improvements upon

199 any of the land in controversy in this case hereinbefore described.

Ans. I have never known men of those names living in that section of the country, or to have any improvements on said land.

Int. 21. State what your opportunity was during that time to know whether such parties ever did settle upon or make any improvements upon that land.

Ans. During the last three years my business has frequently called me to West Las Animas; and being there, if there was any men of that kind, or improvements being put up by them, I would have certainly heard it. I can say I have averaged visiting West Las Animas twice a month.

Int. 22. What was your opportunity during the years of 1872 and 1873 for knowing whether any such parties made settlements or put improvements on that land?

Ans. My opportunity during 1872 & '73 would not be as good as it was afterwards, because in 1872 & 1873 I was employed by the Government as government surveyor, and was frequently absent from the county. I stated in 1872 I passed there about six times. In 1873 I did not pass upon that side of the river at all. I passed on the north side going up to Pueblo once in 1873.

200 Int. 23. Could you look over the land from where you went in 1873?

Ans. Not entirely, because the timber along the river would hide part of the land from my observation.

Int. 24. Do you know who laid out or surveyed off the town of West Las Animas? If so, state who did it and when it was done.

Ans. I do not know of my own personal knowledge, but always understood it to have been done by one of the Kansas Pacific Railroad engineers.

Int 25. Can you name him.

Ans. No, sir; I do not remember his name now. I probably heard it at the time, but I can't recall it at present.

Int. 26. What official position do you now hold and have held in years past in the county of Bent, Territory, now State, of Colorado?

Ans. From the fall of 1874 to 1876 I was county surveyor. I am now county commissioner for the eastern district of that county, and also acting as deputy county surveyor.

(Signed) GEORGE H. HILL.

Sworn to before me, by the said George H. Hill, and subscribed by him in my presence, this sixteenth (16th) day of July in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery of the United States Circuit Court within and for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

201

And thereupon the further taking of these depositions is now here adjourned until Wednesday, the eighteenth (18th) day of July, A. D. 1877, at the hour of 11 o'clock a. m.

(Signed) HENRY C. F. JENSEN,
Master in Chancery.

The taking of these depositions is now here resumed, pursuant to adjournment, on Wednesday, the 18th instant, at 11 o'c. a. m.

And the said SAMUEL N. WOOD, of the age of thirty-three years, a resident of Deadwood, in the Territory of Decota, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters of controversy in the above-entitled cause, I did carefully examine the said Samuel N. Wood, and he did thereupon depose, testify, and say as follows, to wit:

S. N. Wood.

Int. 1. State your name, age, occupation, and residence.

Ans. My name is Samuel N. Wood; age, 33; occupation, that of banking; my residence is Deadwood, I expect, at the present time, in Decota.

Int. 2. Where have you resided during the past six or seven years?

Ans. In Denver, Colorado.

202 Int. 3. What was your occupation, particularly as to where you were employed or doing business during the years 1872, 1'3, and '4, in the city of Denver, Colorado?

Ans. I was, during those years, assistant cashier of the Colorado National Bank of Denver.

Int. 4. Do you know anything about any agricultural college scrip of the State of Florida having been sold or handled by the Colorado National Bank during the year 1873 for one Gleason F. Lewis, of Cleveland, Ohio?

Ans. Yes, sir; at various times during those years we had considerable

amounts of agricultural college scrip sent to us here to be delivered to different parties upon certain conditions, in regard to which we were instructed, upon the payment of certain sums of money of Florida and other States. It was sent to us by this Mr. G. F. Lewis, of Cleveland, but his first name I never knew, only his initials.

Int. 5. State what the relations of the Colorado National Bank were to this scrip, with reference to the sale of it; that is, whether the bank sold the scrip as agent for Lewis, or whether the bank merely handled the scrip and remitted the funds to Lewis.

Ans. We were merely handling the scrip for Lewis, and remitted the money to him. In our instructions in connection with it we were
203 always instructed to deliver the scrip to parties named upon the payment of a certain sum of money, so much for each piece; the amount per piece I have forgotten, but I think it varied; I think the price advanced from time to time, for which we were to get a dollar apiece for our trouble and expenses in the matter.

Int. 6. Did you attend to the business of handling this scrip, delivering it and remitting the money for the bank?

Ans. I generally did.

Int 7. Did the bank deliver and receive the money for the following described numbers of agricultural college scrip of the State of Florida, namely, numbers 175, 180, 31, 30, 36, 3, 185, 182, 4, 178, 187, 183, 177, 34, 7, 184, 6, 35, 29, 200, 174, 5, 188, 176, 179, 37, 186, 18, & 32?

Ans. I cannot give the list of all those that were handled. We handled the following numbers. Sometimes these numbers were recorded in our books and at other times they were not. As a rule, I always kept a record of the numbers, but sometimes others in the bank would deliver them while I was out, and would not keep a record of the numbers. On May 7th we delivered for Lewis and *send* him the proceeds of the
204 following Florida college scrip: Number 174, 175, 176, 177, 178, 179, 180, and numbers 1, 2, 3, 4, 5, 6, 7, and 8. Now, I take it these are 181–'2–'3–'4–'5–'6–'7 & '8, but I am not sure; following consecutively that way it is customary to follow the numbers in that manner. Then, numbers 29, 30, 31, 32, 33, 34, 35, 36, 37. These may be numbers 129, &c. They were credited up on May 7th, 1873, and I presume it was the day they were delivered.

Int. 8. What other numbers did you deliver?

Ans. That is all I looked up; I did not know that there was another date.

Int. 9. There is a few numbers you did not give which I have.

Ans. It's possible we might find them, and it is possible they might not have been recorded. I looked through the books and did not find any other numbers but these. I can find pieces, but no other record of numbers.

Int. 10. Who was the scrip delivered to?

Ans. Mr. Daniel Witter, is my recollection of it now.

Int. 11. Did you deliver other scrip than that you mention at different times during the summer of 1873, to Daniel Witter?

Ans. I did.

Int. 12. You may state about how much or how many pieces you delivered to him.

205 Ans. I don't know that I can tell the number. I might by investigating the books. There was a lagre number, however. It is my recollection that about that time there was a great deal of scrip being sold, and Witter was at that time the party that negotiated with Lewis, and the man to whom he was to deliver. I could not say how much, but there was a large amount at different times.

Int. 13. Did you ever deliver any scrip to any one else during the summer and receive the money thereof from any one except Daniel Witter?

Ans. I do not think we did. Mr. Lewis had several parties here to whom he had scrip delivered, but it was prior to that time, and may have been afterwards, too; but at that time Mr. Witter was the man who had control of all his scrip here.

Int. 14. State what other parties before and after the time you have mentioned handled scrip here, or you delivered scrip to for Mr. Lewis.

Ans. Before that time we delivered scrip at different times to a Mr. W. H. Townsend, but I am not sure that anybody after Mr. Witter. My recollection is that Mr. Witter was the last party who had control of the
206 scrip, and that he had control of it up to the time it became used up, exhausted. If there were other parties after that, I don't remember.

Int. 15. Was all the scrip you have mentioned as being delivered to Witter, the numbers of which you give, delivered on the 7th of May, 1873?

Ans. I have no recollection of the transaction now, but our books show it to have been entered up at that time. There is a possibility that Mr. Witter might have got the scrip a short time before. I have a recollection that he would come in and ask for a certain number of pieces of scrip and say he would come in and pay for it afterwards. I have no recollection whether this was the case with the present lot or not. It might have been delivered and paid for on the same day; but it would not appear as being entered up for Mr. Lewis until the money was paid for it, and it was undoubtedly paid for on this day even if obtained before.

Int. 16. Do you know anything about who Mr. Witter sold the scrip to?

Ans. I do not of my own knowledge.

Int. 17. Was all the scrip you have mentioned, or that you have given numbers of, as having been sold on the 7th of May, or delivered to Witter, agricultural college scrip of the State of Florida?

207 Ans. It was; it was so recorded in our books, and there is no doubt but that is the case.

Int. 18. If you know anything more connected with this transaction, sale, or delivery, of this scrip you may state it.

Ans. I don't think of anything now in connection with it. We merely acted as agents for them. This is about the manner in which the business was done, in which I have stated it.

(Defendants' counsel objected to each and every question asked *to* the witness, as well as the answers thereto, for the reason that the same are irrelevant and did not tend to prove the issues in this case.

By agreement of counsel, the said objection to have the same force and efficiency as if made to each question and each answer at the time that the said questions were made and said answers given.)

(Signed) SAMUEL N. WOOD.

Sworn to before me by the said Samuel N. Wood, and by him subscribed in my presence, this twenty-first (21) day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) HENRY C. F. JENSEN,
Master in Chancery of the United States Circuit Court within and for the District of Colorado, of the Eighth (8th) Judicial Circuit of the United States of America.

208 The further taking of these depositions was thereupon adjourned until Tuesday, the twenty-fourth (24th) day of July, A. D. 1877.

(Signed) HENRY C. F. JENSON,
Master in Chancery for the District of Colorado, Eighth Judicial Circuit of the Circuit Court of the United States of America.

TUESDAY, *July 24th*, A. D. 1877.

The taking of these depositions is now here resumed, pursuant to adjournment, at the hour of 11 o'clock a. m. G. G. Symes, esq., appearing for said plaintiffs, and Alfred Sayer, esq., for said defendants. Colonel Lucien Peyton, special agent for the Department of Justice of the United States of America, at Washington, District of Columbia, also being present.

And the said DANIEL WITTER, of the city of Denver, in the county of Arapahoe, State of Colorado, being of the age of fifty (50) years, having been by me first duly sworn, and cautioned to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters in controversy in this suit, I did carefully examine the said Daniel Witter, and he did thereupon depose, testify, and say as follows, to wit:

Daniel Witter.

Int. 1. State your name, age, and occupation.

209 Ans. Daniel Witter; 50 years old; occupation at present, I hardly know what to say; gardening, I guess; formerly in the real estate business.

Int. 2. How long have you resided in the city of Denver, Colorado?

Ans. Since 1863; since the fall of 1862.

Int. 3. Do you know the parties to this suit; if so, how long have you known them respectively, in which the United States is the plaintiff and David H. Moffat, jr., the defendant?

Ans. I have known the United States for some time; Mr. Moffat since about the time I came to Denver.

Int. 4. Did you deal in—that is, buy and sell agricultural college scrip of the State of Florida and other States during the years 1872, 1873, and 1874?

Ans. I did, about that time, and for several years; I don't remember the exact date now.

Int. 5. From whom did you purchase your scrip, or any particular portion of it, during the year 1873?

Ans. I purchased the scrip at various times from various parties. I remember purchasing a considerable quantity from Mr. Lewis, of Cleveland, Ohio—G. F. Lewis. It was sent to the Colorado National Bank, most of it, at least, and I got it from the bank.

Int. 6. You may state generally how you disposed of that scrip, or sold it.

210 Ans. Generally, the greater portion of it I sold to persons who came to this land office to make locations. I also sold to anybody who would apply to purchase; I sold some to go to the other land offices that I know; some to go to Cheyenne; some to Fairplay, and a considerable amount to Pueblo; some I located myself.

Int. 7. State what your custom was in getting this scrip from the bank, from the Colorado National Bank, where you say it was left; with reference to whether or not you took it from the bank as you sold it; that is, did you take any quantity out of the bank at any time, any considerable quantity, unless you had before contracted to sell and deliver it?

Ans. I might explain that my contracts for scrip were made direct with Mr. Lewis, who sent the scrip to the bank to be delivered to me as I might need it, or perhaps when paid for; I am not positive, but the bank allowed me to take scrip out and sell; I would take what I thought I would need for a week or two and sell it, and when I got more would pay for what I had sold.

Int. 8. Did you sell any considerable quantity to be located at the Pueblo land office, in Arkansas Valley District, during the year 1873?

Ans. I did sell considerable quantity at Pueblo about that time;
211 that is, I sold considerable quantities at Pueblo, but where it was to be located I don't know. I suppose that when I sold at a place where a land office is, it is to be located there, though I know nothing about it.

Int. 9. State, as near as you can, about the quantity you sold at Pueblo, which you say was to be located at that office, during the year 1873.

Ans. Well, it would be the most vague guess-work to answer that question. I was dealing largely in scrip, selling all over the country; that is, I have sold, perhaps, nineteen-twentieths of all the scrip that was located at land offices in this vicinity, and I hardly know what answer to make. I think that if I was going to guess at it, that I sold one hundred or more pieces, and yet it might not be that many, or it might have been more. A piece means 160 acres; very few were for less than 160 acres.

Int. 10. State, as near as you can, the largest amount of scrip that you sold at any one particular time, or on any one particular day, or during any particular week or month, that you can remember, at Pueblo during the summer of 1873.

Ans. I can't state any definite amount. I might state this, that I looked over my letter-book at one time, at the request of Mr. Jacobson,
212 and I found, I think, four or five letters in which I wrote that I had sent certain pieces of scrip to Pueblo, or certain number of pieces, but I don't remember now. My business was so complicated that such things did not stick to my memory. Aside from that, I only remember having sold scrip there at different times in addition to these I found in my letter-book. Whether it *it* was even in that year or not I could not state now.

Int. 11. To refresh your recollection, did you not sell and take from the bank at one time, during the summer of 1873, from 25 to 30 pieces of Florida agricultural college scrip to be located at the Pueblo land office?

Ans. I cannot state. I have no recollection. I have no doubt but what I took from the bank that number of pieces of scrip at different times; but as to whether it was Florida or not I have no recollection, and no recollection of any particular time. My recollection is I usually took from ten to twenty-five pieces of scrip from the bank at a time. When I say to be located, I mean to be be sent to Pueblo.

Int. 12. To whom in Pueblo during this time that has been mentioned did you sell the said scrip, or any portion of it?

Ans. Well, the arrangement was made with Mr. Charles A. Cook by which I was to send scrip to one of the banks there. I am not
213 positive whether it was all sent to the bank or a portion to the bank and a portion to Mr. Cook. I could not state now, but am under the impression that this is the case.

Int. 13. What do you mean by saying the arrangement was made with Charles A. Cook?

Ans. He called to see me to see what I could sell scrip at, and I gave him the prices.

Int. 14. Who paid you for your scrip that you made the arrangement that you say for the sale of, or concerning, with Charles A. Cook?

Ans. I couldn't state positively. It was either Cook or the bank it was sent to; perhaps both. In some cases Cook; in some cases the bank.

Int. 15. What bank was it sent to?

Ans. I think it was the First National Bank, of Pueblo. I think it was Thatcher's bank.

Int. 16. What proportion of the scrip that you sold at Pueblo, or sent to Pueblo, during the year 1873, did you sell under the arrangement which you have mentioned and sent to the First National Bank or to Charles A. Cook?

Ans. Well, a very large proportion of all that I sold there was sent to one or the other of these parties.

Int. 17. Have you any books, papers, copies of letters of any kind, or memorandas that you can refer to to inform yourself more specifi-
214 ally now as to the matters you have been interrogated in reference to?

Ans. I have.

Int. 18. Will you refer to those memorandas?

Ans. Yes, sir. I have looked the whole matter up very carefully, and all I can find is certain letters. (Recess of half an hour to allow witness time to produce said memorandas.) I now have a memorandum of those letters.

Int. 19. Did you or not have or keep a book in which you made entries of the scrip which you sold to different parties, and the names of the parties and the amounts received, &c.?

Ans. I have such a book; but I find upon examination of it that from 1871 up to 1874 or '5 I made very few, if any, entries in it, and during that period I have no record of the scrip I bought and sold except what may be contained in my letter-book.

Int. 20. Did you, on or about the 7th day of May, 1873, take from the Colorado National Bank and send to Pueblo to Charles A. Cook, or the 1st National Bank for him, under the arrangement you have mentioned, 25 or 30 pieces of agricultural college scrip? If yea, you may state the numbers of the scrip that you sent about that time.

Ans. I have no recollection. I may have sent such scrip, but
215 my records do not show it—not any that I have in the office that I can find—at that time, nor at any time that I can remember, as far as that number is concerned.

Int. 21. Did you take from the Colorado National Bank and pay for the scrip referred to in the last interrogatory on or about the 7th day of May, 1873?

Ans. I don't know. I have no record that I am able to find showing it, and I may or may not. I cannot tell.

Int. 22. State the largest amount of scrip that you have sent to Pueblo under the agreement that you have mentioned at any one time during the month of May, 1873.

Ans. The largest amount I have any record of is May 27th, 1873; sixteen pieces. I have no recollection of any distinct number at any other time except so far as my record shows.

Int. 23. You may state as near as you can, by reference to your memoranda of your letters, the number of pieces, the amount of scrip, that you sent at any particular time during the month of May besides what you have just mentioned.

Ans. I have no memorandum of any other pieces during that month, and have no recollection as to that particular month; no recollection of any other pieces.

Int. 24. Give the numbers of the 16 pieces that you sent on May 27th.

216 Ans. There was of Florida scrip from 324 to 339 inclusive.

Int. 25. Who did you send this scrip to?

Ans. I am not able to state. My letter states "in accordance with your telegram of that date I send sixteen pieces of scrip." It would appear from the letter it was sent to Mr. Cook, but from my recollection of the arrangement with him I would suppose it was sent to the bank. It was either sent to the bank under the arrangement I had with Mr. Cook, or it was sent to Cook direct. From my recollection of the arrangement between myself and Cook I should say it was sent to the bank, but from the reading of the letter itself I should say it was sent to Cook.

Int. 26. State particularly what this arrangement or contract was with Cook to send scrip there to the bank for him.

Ans. It was simply an arrangement that I would send such scrip as might be ordered, at a certain price, to the bank for him, or for his use. I might state further that he said to me that he had frequently people call in to make entries that would use scrip if it was where it could be reached, and that if he had land scrip there so that he could tell them where to get it without appearing to sell it himself, that in this was almost everybody who made an entry would get scrip, and I sold it to him at such a
217 price that somebody could make a profit, whether him or the bank I do not know.

Int. 27. You state that you sent a very large proportion of all the scrip that you sent to Pueblo under this arrangement with Cook to him, or to the

bank. State more definitely if you can the *the* exact proportion or the amount that you sent to any one else?

Ans. Well, I can't state exactly. I remember to have sent some scrip there to D. S. Fish, also to A. B. Daniels, and I don't just call to mind the names of any other persons now, nor the amount that I sent them—some 8 or 10 pieces, I think, to each of these parties and to other parties (I have names I don't just call to mind now) at least I am under that impression. I know I sent to individuals frequently when I had orders for a single piece that the party wanted to locate himself. I sent quite a large amount that was located near Canyon City. I don't remember who it was sent to, nor just when it was; it was about that time, though. I sent 15 or 20 pieces that were located near Canyon City. I remember where scrip was located more readily than I do the names of parties that figured in the transaction. That at Canyon City I remember more particularly, because I afterwards procured patents for the parties. Canyon City
218 was within the Arkansas land district.

Int. 28. Now state the numbers of all you can of the scrip that you sent to Pueblo during the year 1873, besides the numbers you have already given?

Ans. All that I can find any record of is May 27th, as I said before; then June 30th, 1873, I write to C. A. Cook, Pueblo, that I send him that day 10 pieces A. C. scrip (agricultural college scrip) numbers 367 to 376, both inclusive, State of Florida. On August 25th, 1873, I write C. A. Cook that I send that day 8 pieces agricultural college scrip, numbers 847 to 855, both inclusive, State of Georgia. August 29th, 1873, I write C. A. Cook, Pueblo, that I send that day 8 pieces agricultural college scrip, numbers 847 to 854, inclusive, State of Georgia. This is all the scrip I can find any record of having been sent C. A. Cook, or the 1st Nat'l Bank, during 1873. They are all in the same way. The letters were addressed to Cook as though the scrip was sent to him, but my recollection is that the scrip was to be sent to bank and the letters are merely notifications of it.

Int. 29. Is this all the scrip that you have a record of, or all that you sent to Pueblo?

Ans. All that I have a record of, although I am very certain
219 that I sent other scrip to Pueblo before, and probably afterwards, under the same arrangement.

Int. 30. Give as definitely as you can the amount you sent before and after the dates you have mentioned, under the arrangement you have mentioned, of which you have no record.

Ans. My impression is that I commenced sending scrip to Pueblo some time in 1872, and from time to time I sent lots about like this which I have described until perhaps some time in 1874. I have no distinct recollection; could not pick out any particular time nor any particular quantity that was sent there further than I have stated.

Int. 31. What was your custom in regard to whether or not you kept a record of all the scrip that you sent.

Ans. Well, I stated that from 1871 to 1874 or '5 I kept no record except these letters that I have referred to. I might state further that one of these lots of scrip was sent by Mr. Todd in my absence, and the letter

written by him. I was quite frequently away, when Todd or some one attending to my business would send the scrip.

Int. 32. Did Mr. Todd, or any one for you, keep a record of the amounts and dates when such scrip was sent to Pueblo or other places?

Ans. To the best of my knowledge, there is no other record than that I have stated of the scrip sent out or sold during that period, from 1871 to 1874, in my office.

220 Int. 33. Do you know whether or not Mr. Todd has a record that he kept?

Ans. I know he has not. All that business was done in my letter-book—all that pertained to my own individual business. It was a matter that he had no interest in, and all such business appears in my letter-book. I might state here that I depended on getting from the Colorado National Bank the scrip that I had received, from that and the record of the land office, to know where it had been located, if any question ever arises as to the validity of the scrip. For that reason I was not so particular about keeping a record of it as I had been formerly, or with land-warrants, more particularly which I bought wherever I could get them.

Int. 34. Who paid you for the scrip that you sent to Pueblo?

A. I am under the impression that the pay came from Cook. I remember in one of these letters I acknowledge the receipt of a draft for the previous lot that was sent.

Int. 35. Was Mr. Cook the receiver of the land office at Pueblo during this time?

Ans. I understood he was, and suppose he was.

Int. 36. Did you sell any considerable quantity of scrip to any particular person in Denver during the year 1873?

Ans. Well, I can't state as to the exact time. I have sold considerable quantities. I don't remember any considerable quantities sold in Denver to any particular person that year. I sold some to A. B. Daniels

221 here that was located here in this office. I think that must have been previous to 1873.

Int. 37. How did Mr. Cook pay you for that scrip? Did he remit the money or draft to any bank in this city; if so, what one?

Ans. I don't remember. My impression is that he sent me a draft on the bank at Pueblo, or that I received a draft on the bank at Pueblo—I could not say positively—or a check on that bank. It's only an impression. I cannot be positive.

Int. 38. Did you or not get any draft or drafts for different quantities of that scrip on the 1st National Bank of Denver?

A. I have no recollection of getting such drafts, although I may have got them. I would not be likely to recollect it now.

Int. 39. Did you sell any scrip during the months of May, June, or July, 1873, to David H. Moffat, jr., or to any one for him, or to his use?

Ans. I have no recollection of having sold him any, nor any one about the bank there, unless it might have been a piece or two. Occasionally I had an order for a piece or two from them. I remember to have sold a few pieces occasionally in that way to the 1st National Bank. Mr. Anderson would come up sometimes and order a piece of scrip, which I would let them have. Aside from that I have no recollection of selling any to the First National Bank.

Int. 40. Who was Mr. Anderson?

222 Ans. He was assistant cashier, or an officer, or a clerk in the bank.

Int. 41. State, as near as you can, the number of pieces you sold to the bank through Mr. Anderson or any employees of it.

A. Not to exceed three or four, and I don't remember when that was.

Int. 42. Did you at any particular time sell any quantity of scrip to the Kansas Pacific Railroad Company, or to any of its officers, agents, or managers, during the summer of 1873?

Ans. I have no recollection of having done so.

Int. 43. Do you recollect that you did not?

Ans. I don't know how to answer that question.

Int. 44. You might have sold some to them and not recollect it. Have you a distinct impression that you did not?

Ans. I have a distinct impression that I did not. To the best of my knowledge I did not sell any scrip that I knew was connected with the road, unless it might have been a piece or two.

Int. 45. Did you know during the year 1873 David M. Edgerton?

Ans. No, sir; I did not.

Int. 46. Did you know Mr. Carr, president of the road?

Ans. I did know Mr. Carr then?

Int. 47. Did you ever have any conversation with Mr. Carr regarding the location of the lands on the Arkansas Valley branch of the Kansas Pacific Road?

223 Ans. No, sir. I never had any conversation with him on that subject, nor with any one connected with the road, to my knowledge; nor, I might say, with any one in regard to the location of lands down there—that is, I mean as far as the time of location is concerned. Of course I have talked with people about it since this trouble came up—I mean prior to the location of the lands in controversy.

Int. 48. Have you talked or had any conversation with any of the parties to this suit since the location of the land regarding its location?

Ans. No, sir, I have not; none whatever.

Int. 49. Have you talked, since the location of the land, with any one interested in the matter of the location of the land?

Ans. No, sir. I have had no conversation whatever with anybody, except the attorneys connected with the matter; that is, referring to this matter.

Int. 50. If you know anything further relating to this controversy—that is, in reference to the location of scrip upon this land in controversy—you may state it.

Ans. I don't know anything further.

(Previous to the examination-in-chief of this witness it was agreed by and between the counsels in said case that the objection to the testimony of this witness, as well as that of the testimony of all witnesses heretofore examined or hereafter to be examined before the master, should be subject to the objection that the same is irrelevant and not tending to prove the issues in the case, the said objection going to each and every question asked the several witnesses, and each and every answer thereto; the object and purpose of this stipulation being a matter of convenience to counsel and to save the repetition of said objection to the said several questions and the answers thereto.)

224

Cross-examination:

X-int. 1. You speak in your direct examination of having sold to the 1st National Bank, or to some officer or clerk connected therewith, a few pieces of agricultural college scrip from time to time, and as they received orders, as you understood, for such scrip. State, if you know, what agricultural college scrip that was, having reference to the State in whose favor it was issued.

Ans. I do not know. I have had scrip from various States, and whatever I happened to have at the time I gave them. I have no idea what it was.

X-int. 2. State if such sales referred to in the last interrogatory and answer were made in the ordinary course of business, so far as you know.

Ans. They were. I think Mr. Anderson generally brought me the letter of the party, showing what was wanted, but I do not remember now who the parties were that wanted the scrip.

X-int. 3. Did you in the same general mode and manner sell agricultural college scrip of various States to the other bank in this town, or in Colorado, or to the officers, agents, or clerks of said banks?

225 Ans. Yes, sir; I have to many of them, probably most of them. I remember selling quite a quantity to the bank at Central City.

X-int. 4. State, as near as you can, the period of time within which you made the sales to said banks, or to some persons connected therewith.

Ans. I probably sold to banks since the first issue of scrip, which must have been in 1864 or '5, or the first that I got out here. I don't remember. I generally had it and sold more or less in that way from time to time to 1875.

(Signed) DANIEL WITTER.

Subscribed by the said Daniel Witter, in my presence, and by him sworn to before me this 24th day of July, A. D. 1877.

(Signed) HENRY C. F. JENSON,
Master in Chancery for the District of Colorado, in the Eighth Judicial District of the United States of America.

The further taking of these depositions is now here adjourned until tomorrow, Wednesday, the 25th day of July, at the hour of 12 o'c. m.

(Signed) HENRY C. F. JENSON,
Master in Chancery for the U. S. Circuit Court, District of Colorado, Eighth (8th) Judicial Circuit of the U. S.

WEDNESDAY, *July 25th*, A. D. 1877.

The taking of these depositions is now here resumed at the hour of 12 o'c. m., pursuant to adjournment.

And the said JEROME B. CHAFFEE, Esq., of the city of Denver, county of Arapahoe, State of Colorado, being of the age of fifty-two (52) years, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery and the matters of controversy in the above-entitled cause, I did carefully examine the said Jerome B. Chaffee, and he did thereupon depose, testify, and say as follows, to wit:

226 *Hon. Jerome B. Chaffee.*

JULY 25, '77.

Inter. 1. State your name, age, occupation, and residence.

Ans. My name is Jerome B. Chaffee; residence, Denver; age—born in 1825—52 years old; occupation, engaged in mining and banking.

Inter. 2. You might state your official position.

Ans. I am Senator of the United States.

Inter. 3. How long have you resided in the city of Denver and State of Colorado?

Ans. I have resided in the State and Territory something over seventeen years.

Inter. 4. What was your occupation with regard to any official position you held during the year 1873?

Ans. I was Delegate in Congress for the Territory.

Inter. 5. Do you know the parties to this suit; if so, how long have you known them, respectively?

Ans. I know Mr. Moffat. I have known him, I guess, about fifteen years.

Inter. 6. Did you during the time you were Delegate, or was it your custom to apply at the Department of the Interior at the request of parties who had made entries of land, to have the patents for which entries had been made delivered to you and then forward them to the patentees?

Ans. Well, it was customary for parties to write me, sending their duplicate receipts, and ask me to see to having their patents issued—hurried up. They thought I could get it quicker than if left to the routine of the office, although I never did get one quicker. They had certain rules there which, as far as I know, they never overruled at all.

227 Inter. 7. Examine the instrument with red ink on the back, the register's and receiver's certificate number 545, in the name of Eli Turner, which purports to say that you applied to have the patent delivered to you for the patentee, and state anything that you may remember about applying for that patent.

Ans. Well, I don't remember anything about it at all.

Inter. 8. Examine the papers now handed you, being the entry papers consisting of agricultural college scrip, affidavits of witnesses, & affidavits of claimants as to their right of pre-emption to the land, respectively numbered agricultural college scrip of the State of Florida 175, 550, 31, 30, 3, 185, 36, 178, 4, 187, 34, 177, 183, 7, 179, 35, 37, 200, 184, 174, 6, 33, 188, 5, 176, & 29, and state all you can with reference to whether or not you made the application to the Commissioner of the Land Office, in behalf of the patentees, to have the patents to be issued under the pre-emption entries made by the location of the said scrip sent to you for the patentees, and with reference to whether or not you filed the duplicate receipts, if you did apply to have the patents delivered to you. You can refer to the memorandums in red ink on the back of these papers from the Interior Department to refresh your recollection with reference to the matter.

Ans. I will state, first, that I never left a duplicate receipt asking to have the patent sent to me in any case that I know of, but I think it was customary with the office that whoever delivered or deposited the receipt

to make a memorandum of it, and send the patent to that party, and if any of these were sent to me it was with that understanding. I don't remember anything at all about any of the identical papers, whether I deposited a duplicate receipt for them or not. I don't remember
228 it from the papers. That is all I can answer about that. I cannot remember from these papers whether I deposited the receipts or not.

Inter. 9. State anything that you may know with reference to the application for the patents in the pre-emption cases mentioned, and to whom the patents were delivered.

Ans. I don't know anything about it from the papers where the land is, or who the pre-emptors were, or anything about it at all. I don't know where this land is. I don't remember anything from these papers about the transaction whatever.

Inter. 10. State anything that you know regarding the application for patents in these cases, and to whom they were delivered, from you' recollection, aside from the papers which have been shown you.

Ans. I don't know anything whatever about these cases. I don't know what "these cases" mean.

Inter. 11. Did you during the summer or fall of 1873 apply to the Commissioner of the Land Office for any number of patents in behalf of Mr. David H. Moffatt, jr.?

Ans. Yes, sir; I think I did *I did* about that time.

Inter. 12. You may state what you can recollect with reference to the number of patents you applied for to the Commissioner of the Land Office in behalf of Mr. Moffat.

Ans. As near as I remember it was about thirteen or fifteen pieces.

Inter. 13. Did you receive from Mr. Moffat, or from any one, the duplicate receipts to be delivered to the Commissioner of the Land Office upon receiving the patents in the cases you have just mentioned for Mr. Moffat?

Ans. I received a letter while I was in Washington or New York—I think in New York, at the St. Nicholas Hotel—while I was East,
229 anyway, I received a letter from Moffat or George W. Wells, who was then acting as assistant cashier of the bank; he is now dead. My recollection is it was from Moffat, although I am not positive about it, but from one of the two I received a letter enclosing from 13 to 15 duplicate receipts, which he said was land down on the Arkansas, and which he had bought and was anxious to have the patents issued, stating in the letter some reason, and I left that letter, with the duplicate receipts, with the Commissioner. I went over and saw the Commissioner. I remember leaving a letter and the receipts with the Commissioner and asking him to issue the patents as soon as he could. I remember that he sent for some clerk and made a partial examination of the matter, and stated to me that it would be some two or three months before he could issue the patents, they belonging to a regular series; that when a certain time expired, which was the rule of the office—I think it was five months after the land had been entered—there was a certain time that must elapse before a patent could be issued, and I know that he said they could not be issued until that time. That is all I done about it until the time expired, and these patents were issued and sent to me, and I sent them to Moffat.

Inter. 14. State as near as you can recollect the date when you applied for the patents and delivered the receipts and the letter which you speak of for Mr. Moffat to the Commissioner?

Ans. It is impossible for me to remember that. I think it was along in the latter part of summer or early in the fall. My recollection is it would be later than July 25. I think it was the latter part of summer or early part of fall. I' was a little while before J. Cooke's failure. I
230 know I was there at that time. It was before that, probably a a couple of weeks; it might not have been as long as that. I know I was East during that time, and this happened while I was East.

Inter. 15. State as near as you can the date when the patents were delivered to you, as you say, and you sent them to Mr. Moffat?

Ans. I have no means of recollecting that date. I guess it was that fall, or else in the early part of winter.

Inter. 16. State as definitely as you can the number of patents that you applied for at any time during the summer or year of 1873 for Mr. Moffat.

Ans. I don't remember of any others at all, from my recollection, but from these papers it seems there was more sent to me. There was certainly no more than fifteen in the first letter I got. I think I have a memorandum somewhere. I know I looked at it some time ago.

Inter. 17. Did you get more than one letter or make more than one application during that year for Mr. Moffat for patents?

Ans. I don't remember of doing so. I might have got other duplicate receipts and left them there in the same way.

Inter. 18. You may state what you know with reference to what land was covered by the application for patents which you made at the time you mention in behalf of Mr. Moffat.

Ans. I only knew it was land down in the vicinity of Las Animas.

Inter. 19. You say you don't remember positively of applying only at one time for patents for Moffat and delivering duplicate receipts, which consisted of about 13 to 15, but you are not certain but you might have made other application'?

Ans. Yes, sir; I only remember of making application there once in regard to patents for Mr. Moffat, and that was the time I spoke of
231 before; and I remember distinctly the Commissioner said it would be some—I think two or three—months yet before he could issue his patents.

Inter. 20. If you remember any particular instructions that Mr. Moffat gave you regarding these particular patents and this land, or his relation to it, you may state what you know on that subject.

Ans. I remember nothing very distinctly; but I have a recollection that either in the letter transmitting the duplicates, or some subsequent or previous letter received about that time, that he told me that he had bought some land down there for the purpose of trying to have a depot located on it, or some part of it, and he was anxious to get his patents issued in order to secure this location. My recollection is that is the reason given for hurrying the patents up.

Inter. 21. You may state what road or railroad company Mr. Moffat had reference to that he was endeavoring to have the depot located on some of this land he had purchased.

Ans. It was the Arkansas Valley Railway Company, from Kit Carson over to Las Animas.

Inter. 22. Was not the Arkansas Valley Railway Company built and owned by the Kansas Pacific Railway Company, or built or owned or controlled by the same officers?

A. I do not know anything about it, and never did.

Inter. 23. Do you not presume, although you cannot at this time recollect, from examining the thirty sets of pre-emption papers, accompanied by thirty pieces of agricultural scrip, the location of which has been mentioned, from the endorsements thereon in red ink made at the Land Office Department, that you applied for and received in behalf of some
232 person or persons, Mr. Moffat or others, the patents in these cases?

(Defendant's counsel objects to the question asked to the witness, for the reason that it calls not for his knowledge in reference to the subject-matter of the question, but for his presumption in regard to the same.)

Ans. I know positively that I never received any thirty patents in New York at one time; neither did I ever receive so many duplicate receipts from Moffat or Wells at any one time.

Inter. 24. Did you receive duplicate receipts, leave them at the office of the Commissioner, and receive the patents in your own possession and transmit them to the parties applying, to any one except Moffat?

Ans. Yes, I did, frequently, from a great many.

Inter. 25. If you know anything further in regard to the application for and delivery of patents, or the entry or the location of the agricultural scrip referred to heretofore in your deposition and in the papers shown you regarding the land in controversy, you may state it.

Ans. I never did know anything about the entries of the land, and I do not remember anything further about obtaining the patents. I never knew before that there was 30 of these cases. I have not the slightest remembrance of ever getting anything except that first lot, it seems to me, in New York, and that I got the balance of them when I was over there in Washington; but I thought there was only 24 or 25 pieces or 27 pieces.

Cross-examination:

X-inter. 1. I will ask you, Mr. Chaffee, if while you were Delegate
233 to Congress from the then Territory of Colorado, including the year 1873, if it was not a common thing for your constituents throughout the Territory at large to transmit to you receipts of the pre-emption or entry of land at the various land offices of the then Territory of Colorado, and to request you to apply at the Department of the Interior, or the proper bureau of said Department, for patents to the land described in said receipts?

Ans. My constituents did frequently make such applications, under the supposition, I suppose, that I could hurry them up. I know they used to write me that they thought I could get their patents, but I never got a patent in my life from that Department before the regular time came round.

X-inter. 2. Was it or was it not your practice to formally comply with such requests by making a proper application?

Ans. I usually in such cases went up to the Department and left the duplicate receipt with the Commissioner, and in some cases I would ascertain the length of time before the patents could be issued and write to the parties sending the receipts when the patent would be issued. That is what I usually done. That is what I done with Moffat's.

X-inter. 3. You speak in your direct examination of having at some time made an application for patents to land, either at the request of Mr. Moffat or Mr. Geo. W. Wells; have you any recollection of the land as described in the duplicate receipts for which said patents were desired?

Ans. No, I have not.

X-inter. 4. Do you know of your own knowledge that you ever applied at the request of Mr. Moffat or Mr. Wells for patents to the land described in the duplicate receipts of the land office of the Arkansas Valley
234 land district of Colorado, which have been shown to you by the counsel for the Government in this case?

Ans. I cannot swear that I know of my own knowledge from these papers.

X-inter. 5. All you know, then, is that you did at some time make an application for patents at the request above stated, but you do not know, and cannot give of your own knowledge, the description of the land for which a patent or patents were desired?

A. That is all I know about it; I only know I made application for some patents.

X-inter. 6. Then it may be that the land for which you applied for patents, as before stated, is other and different land from this described in the documents which have been shown to you on this examination?

Ans. My opinion is it is part of some of this land. If this land or these papers cover land about Las Animas I expect it is part of the land, but I do not know of my own knowledge anything about it from these papers.

X-inter. 7. Can you identify the land for which you made the said application for patents?

Ans. No, I cannot; I cannot tell from own knowledge whether it is the land described by these papers or not.

X-inter. 8. If another package of papers were shown to you coming from the same source, and having like endorsements as upon these which have been shown to you, and describing other and different parcels of land, would you then undertake to say whether you had applied in behalf of Mr. Moffat or Mr. Wells for the patents for the lands described in the one parcel or the other, from any knowledge that you have independent of what the papers themselves might show?

235 Ans. No, I could not; I could not tell; I could not tell by looking at these papers whether it was down on the Arkansas or on the Platte, and I don't believe you could either.

X-inter. 9. Will you, then, undertake to say positively that you made the application concerning which you have spoken for a patent or patents to the identical land described in the papers which have been shown you, or is it a matter of conjecture on your part as to whether you made such application for these identical lands?

Ans. I can't swear that I made application for patents as described in these papers. I only swear I made application for a number of patents for some land down on the Arkansas somewhere, down about Las Animas, reported to me to be there.

X-inter. 10. Then all you mean to say is that at the request of Moffat or Wells, and which one you do not remember, you did make a merely formal application to the Commissioner of the General Land Office at

Washington for patents to certain lands, which you now remember were stated by the applicant to be located somewhere down in the Arkansas Valley in the then Territory of Colorado?

Ans. That is all.

Redirect examination:

Inter. 1. What are your business relations with Mr. Moffat, or were they, at this time?

Ans. In the bank he was cashier and I was president.

(Signed) JEROME B. CHAFFEE.

Sworn to by the honorable Jerome B. Chaffee before me, and by him subscribed in my presence, this 28th day of July, A. D. 1877.

(Signed) HENRY C. F. JENSEN,

236 *Master in Chancery of the United States Circuit Court for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.*

The further taking of these depositions is now here adjourned until to-morrow, at the hour of ten (10) o'clock a. m.

(Signed) HENRY C. F. JENSEN,
Master in Chancery.

THURSDAY, *July 26th, A. D.* 1877.

The taking of these depositions is now here resumed at the hour of 10 o'clock a. m., pursuant to adjournment.

And the said SAMUEL S. LANDON, of the city of Denver, in the county of Arapahoe, State of Colorado, being of the age of about thirty-four (34) years, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matters of controversy or proceedings in chancery in the above-entitled cause, I did carefully examine the said Samuel S. Landon, and he did thereupon depose, testify, and say as follows:

Sam. S. Landon.

JULY 26, '77.

Inter. 1. State your name, age, occupation, and residence.

Ans. Sam. S. Landon; 34 years old; abstractor of titles; residence, Denver, Colorado.

Inter. 2. How long have you resided in Denver?

Ans. Since June, 1870.

Inter. 3. Were you a notary public during the year 1873 for the county of Arapahoe, State of Colorado, duly commissioned and qualified?

Ans. I was, sir.

237 Inter. 4. Examine the certified copies of deeds now shown you (hands papers to witness) purporting to have been executed by Philip Quinlan, Sam. H. Long, Orton Spencer, Slicer B. Evans, Amos K. Howe, Kaleb Wilson, and Charles F. Walling to Henry A. Perry and Thomas Harris, and state whether or not you as a notary public took the acknowledgements and signed the certificates of acknowledgements to

these deeds, and purporting to have been acknowledged on the 30th day of May, the 3d day of June, the 24th day of May, the 21st day of May, the 23d day of May, the 2d day of June, the 12th day of June, 1873, by said parties.

Ans. Yes, sir; I believe I did. I have no reason to think the contrary.

Inter. 5. Examine the deeds now handed you, purporting to have been executed, two of them by Henry H. Perry to David H. Moffat, and the other one by Thomas Harris to David H. Moffat, jr., and purporting to have been acknowledged on the 26th day of June, 1873, 21st day of June, 1873, and 23d day of June, 1873, and state whether or not you took the acknowledgements of these deeds?

Ans. All that have my name to I have no reason to doubt that I took. The one from Harris to Moffat I believe I took it.

Inter. 6. Did you know Edwin H. Kellogg as a notary public of this county, about the 21st of June, 1873?

Ans. I knew him, but I do not know how long he has been a notary. I remember of his living here.

Inter. 7. Did you know Joseph B. Cass about the 23rd of June, 1875?

Ans. Yes, sir.

238 Inter. 8. Know whether he was acting as a notary?

Ans. I do not. He was a notary, but I don't know whether he was at that time or not. I remember he was at some time, and I have no real knowledge of that, other than I have seen his name signed to deeds.

Inter. 9. When you say you think you took these acknowledgements because your name appears attached as notary to the certificate of acknowledgement of the deeds, did the parties appear before you and acknowledge the same?

Ans. That would be a hard question for me to answer; some one appeared before me and acknowledged the deeds.

Inter. 10. Did you keep the record book required by the statute in such case, and make the entries required therein of all the acknowledgements that you took to deeds during the time that these deeds purport to have been acknowledged?

Ans. I kept no record. I never kept much of any record. I have kept a record of protests only, and of nothing else. I cannot swear as to whether I had a record in 1873 or not. I did have some record in a book which I kept on my desk for the purpose of keeping memorandums in. I tore the leaves out of that book and kept them under my desk for a long time, but I find that I have a record now, or a partial record, in December, '71, January, February, March, April, May, June, '72, April, May, June, 1874, January, May, July, & August, 1876, part of March, 1877, and I guess part of September, 1876, but I never kept a record regularly.

The reason I kept this first record was because Jones and I was in
239 partnership. After he went away I kept no record at all. I have a record of a portion of 1872, none of 1874, none of 1875, none of '75, part of '76, & three months of 1877.

Inter. 11. Did you keep this partial record during the months of May and June, 1873?

Ans. No, I do not think I did. I had some portions of my record which I tore out, and lost it; at least I cannot find it for a number of years. I must confess I never kept a record; that is the true fact of it.

Inter. 12. Then you say you have no record as notary that you have preserved, that you can produce here, which was made and kept during the time of the acknowledgements referred to in these deeds?

Ans. Yes, sir; because, you see, from the records I have now I have kept them in a very unbusiness-like manner.

Inter. 13. State all that you can remember with reference to the acknowledgement of these papers handed you—deeds—in regard to taking the acknowledgements of them, and what you remember with regard to who produced the parties, if any, or any recollection you may have in regard to the matter.

Ans. I have no recollection at all; like every other business transaction, I did not suppose it would require any attention. I could not tell about the acknowledgements I took two weeks ago.

Inter. 14. What was your custom during the time mentioned when taking an acknowledgement with reference to the evidence you required of the identification of the party presenting himself to acknowledge a deed or other instrument?

Ans. Well, now, that question I cannot answer. There is a thou-
240 sand and one answers to it. In some cases I required evidence and in some cases I did not. Now, if you were to bring in a man and say, "Here is a man that wants to acknowledge a deed," I would ask him if he acknowledged it, and if he said he did, I would take his acknowledgement. Sometimes I would take an acknowledgement without identification, and sometimes I would not.

Inter. 15. Then you sometimes took acknowledgements of parties when they presented themselves with a deed which they said they had executed alone, and required no identification of no other party?

Ans. Yes, sir; I did.

Inter. 16. Is it not probable that you took the acknowledgements of the deeds that have been handed you by some parties presenting themselves, and you not requiring any evidence of who they were, or whether they bore in reality the names mentioned in the instrument?

Ans. There certainly must be. If I had done it in one case of course I might have in another; of course there might be a probability that that might happen.

Inter. 17. Was it your custom to sign a certificate of acknowledgement at the request of any person you knew who did business with you, on their presenting a deed or instrument and telling you that the man had signed it and did acknowledge it, without producing the man himself?

Ans. No, sir; I have taken acknowledgements from Mr. Witter and filled them out for him and laid them away until the time he might want to use them—that is, in his name—of his own property. I remember a case where John W. Smith's wife sent a note to me acknowledging a
241 deed, and I took the acknowledgement without her appearing. This is a case I distinctly remember. I took this because I was pretty positive that it was all right; her husband brought the note himself.

Inter. 18. Did you have any knowledge, by information or otherwise, at this time, May or June, 1873, or before or after, regarding the entry of the land called, commonly called, the Las Animas land-grab?

Ans. No, sir; I never knew anything about it until I was subpenaed at Pueblo on the part of the Government.

(Signed) SAM. S. LANDON.

Sworn to before me by the said Samuel S. Landon, and by him subscribed in my presence, this 3d day of August, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery of the United States Circuit Court for the District of Colorado, in the Eighth (8th) Judicial Circuit of the United States of America.

And the further taking of these depositions was thereupon adjourned until to-morrow, Friday, the twenty-seventh (27th) day of July, A. D. 1877, at thehour of 10 o'clock a. m.

HENRY C. F. JENSEN,
Master in Chancery for the United States Circuit Court in the District of Colorado, in the Eighth (8ht) Judicial Circuit of the United States of America.

FRIDAY, *July 27th, A. D.* 1877.

242 The taking of these depositions is now here resumed at the hour of 10 o'clock a. m., pursuant to adjournment.

And the said RICHARD SIMPSON, of the town of Ouray, county of Ouray, State of Colorado, being of the age of about forty-six (46) years, and being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the proceedings in chancery or matters of controversy in the above-entitled cause, I did carefully examine the said Richard Simpson, and he did thereupon depose, testify, and say as follows, to wit:

Richard Simpson.

Inter. 1. State your name, age, occupation, and residence.

Ans. Richard Simpson; 46 years old in October; I am now selling goods in San Juan; residence Ouray, Ouray County.

Inter. 2. Have you resided in Las Animas, Bent County, Colorado? If so, state when and how long you resided there.

Ans. I resided in Bent County since the winter of 1869–'70. I came there just before January, 1870, and resided there until about the 27th of last April.

Inter. 3. What official position have you or did you hold in Bent County during the time you resided there?

Ans. I was county clerk of the county there. I was elected in the fall of 1874, and at last fall's election also. I was county clerk at the time I left, and am still county clerk there.

Inter. 4. What official position did you hold or occupy during the summer or fall of 1873 in that county?

Ans. I was acting as deputy clerk of the county at that time.

Inter. 5. Did you, during the summer or fall of 1873, as deputy
243 clerk and county recorder, have charge of the records of the office, and attend to most of the business done in the office?

Ans. I did, sir.

Inter. 6. State what you know, if anything, about a man by the name of Samuel A. Hutchins bringing a number of patents and deeds to be recorded in the Bent County recorder's office during the fall of 1873.

Ans. Yes, sir; Hutchins in that fall brought some patents and deeds there for record when I was acting as deputy clerk at that time, and I recorded them all, I think, but one or two, which recorded, but I am not sure. I done all the recording except when I was out of the office to my meals.

Inter. 7. How many patents and deeds were there?

Ans. About seven patents is my recollection, and deeds from the patentees to Harris and Perry, and from Harris and Perry to David H. Moffat, jr. I don't remember the number of deeds; it seems to me there was about twenty or from twenty to twenty-five, but I could not say as to the number.

Inter. 8. Examine the certified copies of patents now handed you from the records of the recorder's office of Bent County, and state, if you know, whether or not they are certified copies of the patents that you have referred to as being brought there by Hutchins to have recorded.

Ans. Yes, sir; I made the record in the first place, and made these copies.

Inter. 9. State who are the patentees in these patents from the United States.

Ans. Amos K. Howe, Charles F. Walling, Slicer B. Evans, Samuel A. Long, Caleb Wilson, Phillip Quinlan, Orton Spencer, as appears from the patents which I recorded.

244 Inter. 10. Examine the certified copies of deeds now handed you, and state what you know about these papers being certified copies of the deeds that Hutchins brought there at the time you speak of, and that you recorded.

Ans. Yes, sir; the deeds that were transferred by the patentees to Harris and Perry. They were all filed and recorded at the same time for the same amount of land, the land that was recorded in the seven patents, and an additional amount of land I believe also; that is, they deeded a greater amount of land than was included in these 7 patents & 7 deeds.

Inter. 11. State what land is included in the seven deeds that you have last referred to as being from the said patentees to Thomas Harris and Henry H. Perry?

Ans. It is land in sections 10 and 3, township 23, range 52, on which the town site of Las Animas is located.

Inter. 12. Examine the three certified copies of deeds I hand you purporting to have been made by—two of them—*by* Henry H. Perry to David H. Moffat, jr., and the other one by Thomas Harris to David H. Moffat, jr., and state what you know about these certified copies of deeds with reference to whether you recorded them or the original deeds, and what land they convey?

Ans. I recorded the deeds; I could not tell exactly what land; the lands lie there in the valley around Las Animas, in township 23, and range 52 & 53, most of it. This includes all the land in the first seven patents, and a great deal more; I don't remember the amount; it run up to what we term the lime-kiln, which was at the upper end of the valley above

245 Las Animas. This deed from Harris to Moffat the land is all in township 23, 53, in different sections.

Inter. 13. Do you know where 23, 53 is?

Ans. It is in Bent County in this State.

Inter. 14. Whereabouts?

Ans. Right on the Arkansas River just west of West Las Animas. The lands mentioned in these deeds comprises the town of West Las Animas in Bent County, and land adjoining in the bottom, extending up the river west.

Inter. 15. State what you know about Mr. Hutchins when he brought those deeds and patents there to have them recorded, desiring to have them recorded as soon as possible, or with reference to whether he refused to have the papers left there and desired to take them away with him, and whether he waited for them.

Ans. I don't know that Hutchins refused to leave the deeds there, but he was very anxious to have them recorded and take them away with him. I met him in the morning as I was going to breakfast, and was introduced to him by a friend, and he said he wanted to have it done immediately, and I went to work upon the deeds. He wanted it done at once, and seemed to me, as I thought, a little fearful to leave the deeds there. I told him there was no trouble about it at all; that there would be no interference with the office, but he insisted upon having it done so that he could take the deeds with him, and I went to work and recorded the deeds just as fast as I could do so, and finished up the record, and he paid me for them and took them with him and left.

Inter. 16. Did he offer you any extra compensation over the regular recorder's fees?

Ans. He told me he would give me extra pay in order to get
246 them as soon as possible. I told him I would not charge him anything extra, and did not charge him anything, only the prices marked upon the records.

Inter. 17. State what you know about in whose behalf, or at whose request, or in whose employ Mr. Hutchins was, or for whom he had these deeds recorded.

Ans. So far as in whose interest they were being recorded, I only judge from the deeds themselves. He might have stated Moffat sent them down, or he might not; I do not remember; and of course my mind was made up that it was in the interest of Moffat that he was sent there, but whether I got that from the deeds or from what he said I don't know.

Inter. 18. How well acquainted have you been in Bent County since 1869?

Ans. Well, sir, I have been in a position there to get pretty well acquainted with most every one of that particular section of country immediately around there. I have been there since 1870, and about five years of the time I have been in that office—nearly five years. The office at the time this occurred was down at the old town.

Inter. 19. State what you know about there having been any improvements put upon or settlements made upon the land described in these deeds and patents during the year 1872 or 1873.

Ans. I don't remember of seeing any improvements upon that land in question until about the time—in the fall of 1873—this branch road was building from Carson; when it got over about 8 miles from our town it turned in the direction of this land, and some men from our town went up there and built cabins. This is all the improvements I recollect of until
after the town grew up. I used to pass up and down the bottom
247 occasionally, and would have noticed improvements if there was

any there, and I never noticed any until about that time, and they was made by men going up there and taking up claims, thinking the road would run in there from the turn of the road.

Inter. 20. Did you ever know the following-named parties, namely, Eli Turner, George Taylor, Henry D. Simpson, Jacob Linden, Arthur McLane, Philip Quinlan, Amos K. Howe, Phelps Johnson, Samuel A. Johnson, James Rogers, Samuel R. Bruse, Richard Seymore, James C. Hall, Caleb Wells, Orton Spencer, Charles M. Clark, Michael Quinlan, Charles R. Day, Stearl Sims, Slicer B. Evans, Anson Beck, O. R. Peasley, Charles F. Wallen, Samuel Cutler, Simeon D. Porter, Henry H. Perry, James Irwin, Alex. J. Fariman, Jarred Howe, Thomas Harris, as having lived on or upon this land mentioned, or having settled upon the land or made any improvements thereon, or lived in the vicinity of this land?

Ans. I do not know any of the parties at all; if they lived there I knew nothing about it.

Inter. 21. State what your opportunity was for knowing if these parties lived there or in that vicinity, or settled upon or put improvements upon this land.

Ans. Well, sir; I was living right there at the county seat. I was occasionally over the land, and I know there was no improvements there. I never saw or heard of one of these parties in the country.

Cross-examination:

X-inter. 1. State, if you know, if Mr. Hutchins, at the time that he gave you the patents and deeds to be recorded, concerning which you have testified, had any other documents which he desired to have recorded in his own behalf?

248 Ans. I cannot state as to the time, whether that time or not, but believe it was at the same time that he filed a lien on the Arkansas branch of the road that he had built over; he built the road over from Kit Carson to Las Animas. My recollection is that he had this paper recorded at the same time.

X-inter. 2. Your statement as to what deeds and patents were recorded is based, as I understand it, upon your recollection, assisted by the certified copies which have been shown you?

Ans. Yes, sir, altogether; I recollect something about it as to time, &c.

X-inter. 3. State, if you remember, whether or not it was an unusual matter for persons desiring to have papers recorded to request that the same should be recorded as soon as possible and returned to the parties asking for the recording of the same, having reference of course to the time during which you were deputy recorder of Bent County.

Ans. No, sir; it was frequently the case that parties would come in with papers for record and want them recorded at once; wanted to take them out with them; it was not an uncommon thing at all. A great many persons that bring papers in there seem to think they have to stay and watch them until they are recorded.

X-inter. 4. State if at any time during the year 1873 you had any knowledge from public prints or rumor or otherwise of there having been trouble in regard to and the destruction of records in the county of Las Animas, in this State (and then Territory of Colorado). If so, state your knowledge of such trouble and how you obtained your information of the same.

Ans. It seems to me there was some records destroyed in Las
249 Animas County, but I could not state as to the time, whether it was before or after June, 1873.

X-inter. 5. Was the matter of the destruction of the said records in Las Animas County a matter of public notoriety, either by rumor or mention being made of the same in the public prints?

Ans. My recollection is I saw it in the papers of the destruction or stealing of the records there; that is, in Las Animas County, Trinidad; I know I heard it or read it. I think I saw it in the papers. I know it was common report and rumor at the time. It seems to me also that there was some burning of records first, and afterwards a stealing of some records, a year or two afterwards.

X-inter. 6. State, if you know, whether there is and whether there then was within the Territory of Colorado (now State) a county named Las Animas, as well as of a town of the same name in a different county.

Ans. Yes, sir; there was a county of Las Animas, and a town of Las Animas in a different county from it.

(Signed) RICH'D SIMPSON.

Subscribed by the said Richard Simpson in my presence, and by him sworn to before me, this twenty-seventh (27th) day of July, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery for the United States Circuit Court,
District of Colorado, Eighth (8th) Judicial Circuit
of the United States of America.

I, Henry C. F. Jensen, master in chancery of this court, duly appointed by the circuit court of the United States for the district of Colorado, in the eighth judicial circuit, do hereby certify that on the several
250, 251 days named in the depositions and testimony hereto annexed, I was attended at my office, in room number fourteen, in Good's block, corner of Larimer and Sixteenth streets, in the city of Denver, Arapahoe County, Colorado, by G. G. Symes, esq., special counsel for the United States, and Alfred Sayer, solicitor and counsel for the defendants, and the witnesses aforesaid; that the said witnesses were duly sworn and examined and the said testimony and depositions were reduced to writing and read to the said witnesses, and by them subscribed and sworn to in my presence; and that exhibits marked "A" and "B" were introduced in evidence during the taking of the testimony of the said witness, George H. Hifi.

All of which is respectfully submitted.

Dated this first day of October, A. D. 1877.

(Signed) HENRY C. F. JENSEN,
Master in Chancery.

(Endorsed:) No. 9. In the circuit court for the district of Colorado, eighth judicial circuit of the United States. The United States versus David H. Moffat, jr., et als. Depositions and testimony of witnesses taken and reported by H. C. F. Jensen, master in chancery. Master's fees, 891.10; paid by plaintiff. Filed Oct'r 15th, 1877. (Signed) Edward F. Bishop, clerk.

252, 253 And afterwards, and on, to wit, the 27th day of May, A. D. 1878, the following oral testimony heretofore heard by the court in the said cause, number 9, and reduced to writing, was filed in said court and in said cause numbered 9, to wit:

Oral testimony.

254 (Envelope indorsed:) M. 10848; Div. G., = 30; C. B. P. 192; R. & R. No. 526; A. C. S. No. 4; State of Fla., L. O. Pueblo, Col. Ter'y. Name, Samuel A. Long; tract, lots 3 & 4 & N. SW. 4, 3, 23 S., 52 W. Docket No. . Page . Action .

255 (R. & R. No. 526.)

Agricultural college, act of July 2, 1862.

REGISTER'S OFFICE,
Pueblo, Colorado, May 8, 1873.

Scrip No. 4, State of Florida, in the name of Samuel A. Long, has this day been located by him upon the lots 3 and 4 and N. ½ of SW. quarter of section 3, in township 23 south, of range 52 west.

Contents of tract located 160 acres.

IRVING W. STANTON, *Register.*

(Across the face in red:) P. A., 1881.

For value received, , to whom the within certificate of location was issued, do hereby sell and assign unto , and to heirs and assigns forever, the said certificate of location, and the scrip and land therein described, and authorize him to receive the patent therefor.

Witness my hand and seal this day of , 186 .

[SEAL.]

Attest:

STATE OF ,
County of :

On this day of , 186 , before me, personally came , to me well known, and acknowledged the foregoing assignment to be act and deed, and I certify that the said is the identical person to whom the within-named scrip was issued.

256 (Duplicate, excess receipt, No. 694.)

Agricultural college, act of July 2, 1862.

RECEIVER'S OFFICE AT PUEBLO, COLORADO,
May 8th, 1873.

Received from Samuel A. Long, of Bent County, Colorado, the sum of thirty-two dollars and 11 cents, being in full for twenty-five acres and 69 hundredths of lots 3 and 4, and N. ½ of SW. ¼ of section No. 3, in township No. 23 south, of range No. 52 west, being excess in said tract over

the area located in virtue of agricultural college scrip certificate No. 4, State of Florida.

CHAS. A. COOK, *Receiver.*

R. & R's No. 526.]
832.11.]

257 *Non-mineral affidavit.*

COUNTY OF PUEBLO,
Territory of Colorado, ss:

Samuel A. Long, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the lots 3 & 4 & N. ½ SW. ¼ Sec. 3, T. 23 S., R. 52 W.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes.

SAMUEL A. LONG.

Subscribed and sworn to before me this 8th day of May, A. D. 1873, and I hereby certify that the foregoing affidavit was read to the said Samuel A. Long previous to his name being subscribed thereto; and that deponent appeares a respectable person, to whose affidavit full faith and credit should be given.

IRVING W. STANTON, *Register.*

258 Agricultural college act of July 2, 1862.

(Agricultural scrip, No. 4, State of Florida. Register and receiver's No. 526.)

LAND OFFICE,
Pueblo, Colorado, May 8th, 1873.

We hereby certify that the attached scrip No. 4, State of Florida, was on this day received at this office from Samuel A. Long, of Bent County, Territory of Colorado.

IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

I, Samuel A. Long, of Bent County, Terr't'y of Colorado, hereby apply to locate and do locate the lots 3 & 4 and N. ½ of SW. quarter of section No. 3, in township No. 23 south, of range No. 52 west, in the district of lands

subject to sale at the land office at Pueblo, Colorado, containing 185 $\frac{69}{100}$ acres, in satisfaction of the attached scrip numbered 4, State of Florida, issued under act of July 2, 1862.

Witness my hand this 8th day of May, A. D. 1873.

SAMUEL A. LONG.

Attest:

IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

I request the patent to be sent to

LAND OFFICE,
Pueblo, Colorado, May 8th, 1873.

We hereby certify that the above location is correct, being in accordance with law and instructions.

CHAS. A. COOK, *Receiver.*
IRVING W. STANTON, *Register.*

(Across the face in red ink:) P. A. 1841. Excess paid per receipt No. 694.

(Indorsed:) Register & receiver's No. 526; Agricultural college, No. 4; located May 8th, 1873, by Samuel A. Long, at Pueblo, Colorado. Sect. 3, town. 23 S., range 52 W. D. S. No. 1760. Filed May 8, 1873. Settled Ap'l 3, 1868. Unoffered. No conflict. Area 185.69. Correct. Lots 3 & 4 must be described as south of Ark. River. See plat. Within claim Vigil & St. Vrain. D. K., July 24, '73. Approved October 3d, 1873. Brown. Describe lots in patent as south of the Arkansas River. W. W. Curtis, C. C. (Stamped:) Transmitted Oct. 16, 1873. Send patent to Hon. J. B. Chaffee, who filed dup. per K. 54296. D. K. Entered on L. R. 33. S. W. O. 25. Ex. June 20, '73. C. B. S. Pat. Oct. 4, 1873. Rec. vol. 135, page 387.

259 I, Orvin R. Peasley and Philip Quinlan, of Bent County, Colorado, do solemnly swear that Samuel A. Long is a citizen of the United States, over the age of twenty-one years, and is an inhabitant of the lots 3 & 4 and N. $\frac{1}{2}$ of SW. quarter of section No. 3, of township No. 23 south, of range No. 52 west, and that no other person resided upon the said land entitled to the right of pre-emption; that the said Samuel A. Long entered upon and made a settlement in person on the said land since the 4th day of September, 1841, to wit, on or about the third day of *of* April, 1868; he has built a comfortable frame dwelling-house on said land, 20 by 26 feet, with three doors and four windows, board floors and shingle roof, and has lived in the said house, and made it his exclusive home from the 15th day of May, 1868, till the present time; that he did not remove from his own land, within the Territory of Colorado, to make the settlement above referred to; and that he has, since said settlement, plowed, fenced, and cultivated about 2$\frac{1}{2}$ acres of said land; he has also built 2 log houses for employees, each 14 by 16 feet; also a corral, a stable, a spring-house, and has made over 150 rods of fence. The land is used almost exclusively for stock and grazing purposes.

ORVIN R. PEASLEY.
PHILIP QUINLAN.

I, Irving W. Stanton, register, do hereby certify that the above affidavit was taken and subscribed before me this 8th day of May, A. D. 1873.

IRVING W. STANTON, *Register.*

We certify that Orvin R. Peasley & Philip Quinlan, whose name' are subscribed to the foregoing affidavit, are persons of respectability.

IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

260 (Indorsed:) Certificate No. 526. Proof of right of pre-emption. Sec. 3, T. 23 S., R. 52 W. Pre-emption act 4th September, 1841. Allowed this 8th day of May, 1873. Irving W. Stanton, register; Chas. A. Cook, receiver.

I, Samuel A. Long, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the public lands, and to grant pre-emption rights," approved September 4, 1841, to the lots 3 & 4, & N. ½ SW. quarter of section number 3, of township number 23 south, of range number 52 west, subject to sale at the land office at Pueblo, Colorado Territory, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of any land in any State or Territory of the United States; nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Goyernment of the United States would inure, in whole or in part, to the benefit of any person except myself.

SAMUEL A. LONG.

I, Irving W. Stanton, register of the land office, Pueblo, Colorado Territory, do hereby certify that the above affidavit was taken and subscribed before me this 8th day of May, A. D. 1873.

IRVING W. STANTON, *Register.*

261 Land scrip No 4. For "one-quarter section." Genuine. D. McC. Colleges for agriculture and mechanic arts. Act of Congress, July 2, 1862. For State of Florida.

Whereas, in pursuance of the act of Congress, approved July 2, 1862, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts,"

The State of Florida has accepted the grant provided by the said act, and under the same has consequently a legal claim to ninety thousand acres not locatable by the State itself, but liable to transfer, and may be located by the assignees of said State according to assignment, attested by two witnesses in the form on the back of this instrument, the locations by assignees in satisfaction of the claim above-mentioned to be made in virtue of a regular series of scrip, a part of which is this land scrip No. 4, for one-quarter section:

Therefore be it known that this scrip, when duly assigned and attested by two witnesses, under such authority of the said State as the act of the legislature thereof may designate, may be surrendered at any land
262 office of the United States, in satisfaction of a location of "one-quarter of a section" or for any quantity in one legal subdivision less than "one-quarter section," where such location is taken in full for "one-quarter section," the entry to be restricted to vacant public lands subject to entry at private sale, at $1.25 per acre, mineral lands excluded; and whilst the aggregate location of all the claims under the said act may be taken in any of the Territories without limitation as to the quantity located in any one of them, yet in virtue of express limitation in the statute "not more than one million acres" of the total aggregate scrip issue under said act can be located within the limits "of any one of the States."

Given under my hand and the seal of the Department of the Interior, on the twenty-third day of December, A. D. 1872, and of the Independence of the United States the ninety-seventh.

[SEAL.] R. J. CAMM,(?)
Acting Secretary of the Interior.

Recorded, vol. 204, page 229.

WILLIS DRUMMOND,
Commissioner of the General Land Office.

(On the margin:) W. R. Mendenhall.

(Endorsed on back as follows:)

STATE OF FLORIDA,
City Tallahassee, March 27th, 1873.

263, 264 In virtue of the act of the legislature of the State of Florida, chapter 1166, session laws of Florida, approved February 18th, 1870, and amended 1872, a copy of which has been filed in the General Land Office, at Washington, D. C.:

I, William D. Bloxham, vice-president of the Florida Agricultural College, for value received, do hereby assign and transfer to Samuel A. Long, of Bent County, Territory of Colorado, this scrip No. 4, and authorizing the said assignee to locate the same upon the terms and conditions specified in said scrip.

Given under my hand and seal this 27th day of March, A. D. 1873.

[SEAL.] W. D. BLOXHAM,
Vice-President of the Florida Agricultural College.

Attest:
G. T. LEWIS.
WM. E. LEWIS.

(Stamped:) General Land Office, located and patented.

265 (Envelope indorsed:) C. M. 10848; Div. G., = 15; C. B. P. 192; R. & R. No. 546; A. C. S. No. 176. State of Fla. L. O. Pueblo, Col. Terr'y. Name, Simeon D. Porter; tract, lots 1 and 2 of 6; W. N. $\frac{1}{2}$ of NE. $\frac{1}{4}$. Docket No. . Page . Action .

266 Agricultural college act of July 2, 1862.

(R. & R. No. 546.)

REGISTER'S OFFICE,
Pueblo, Colorado, May 16th, 1873.

Scrip No. 176, State of Florida, in the name of Simeon D. Porter, has this day been located by him upon the lots 1 & 2 of section 6, and N. ½ of NE. quarter of section 7, in township 23 south, of range 52 west.

Contents of tract located, 160 acres.

IRVING W. STANTON, *Register.*

(Across the face in red:) P. A. 184½.

For value received, , to whom the within certificate of location was issued, do hereby sell and assign unto and to heirs and assigns forever, the said certificate of location, and the scrip and land therein described, and authorize him to receive the patent therefor.

Witness my hand and seal this day of , 186 .

[SEAL.]

Attest:

STATE OF , *County of* :

On this day of , 186 , before me, personally came , to me well known, and acknowledged the foregoing assignment to be act and deed, and I certify that the said is the identical person to whom the within-named scrip was issued.

267 Agricultural college, act of July 2, 1862.

(Duplicate excess receipt No. 720.)

RECEIVER'S OFFICE AT PUEBLO, COLORADO,
, 187 .

Received from Simeon D. Porter, of Bent County, Colorado, the sum of eleven dollars and 06 cents, being in full for eight acres and 85 hundredths of lots 1 & 2, sec. 6, & N. ½ of NE. ¼ of section No. 7, in township No. 23 south, of range No. 52 west, being excess in said tract over the area located in virtue of agricultural college scrip certificate No. 176, State of Florida.

CHAS. A. COOK, *Receiver.*

R. & R's No. 546.
$11.06.

268 *Non-mineral affidavit.*

COUNTY OF PUEBLO,
Territory of Colorado, ss:

Simeon D. Porter, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the lots 1 & 2, sec. 6, & N. ½ NE. ¼ sec. 7, T. 23 S., R. 52 west; that

he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to mineral land, but with the object of securing said land for agricultural purposes.

SIMEON D. PORTER.

Subscribed and sworn to before me this 16 day of May, A. D. 1873, and I hereby certify that the foregoing affidavit was read to the said Simeon D. Porter previous to his name being subscribed thereto; and that deponent is a respectable person to whose affidavit full faith and credit should be given.

IRVING W. STANTON, *Register.*

269 Agricultural college act of July 2, 1862.

(Agricultural scrip, No. 176, State of Florida. Register and receiver's No. 546.)

LAND OFFICE,
Pueblo, Colorado, May 16th, 1873.

We hereby certify that the attached scrip No. 176, State of Florida, was on this day received at this office, from Simeon D. Porter, of Bent County, Territory of Colorado.

IRVING W. STANTON *Register.*
CHARLES A. COOK, *Receiver.*

I, Simeon D. Porter, of Bent County, Territory of Colorado, hereby apply to locate and do locate the lots 1 & 2, section 6, and N. $\frac{1}{2}$ of NE. quarter of section No. 7, in township No. 23 south, of range No. 52 west, in the district of lands subject to sale at the land office at Pueblo, Colorado, containing 168.85 acres, in satisfaction of the attached scrip numbered 176, State of Florida, issued under the act of July 2, 1862.

Witness my hand this 16th day of May, A. D. 1873.

SIMEON D. PORTER.

Attest:

IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

I request the patent to be sent to

LAND OFFICE,
Pueblo, Colorado, May 16th, 1873.

We hereby certify that the above location is correct, being in accordance with law and instructions.

CHAS. A. COOK, *Receiver.*
IRVING W. STANTON, *Register.*

(In red ink across the face:) P. A. 1841. Excess paid per receipt No. 720.

(Indorsed:) Register and receiver's No. 546; Agricultural college scrip, No. 176; located May 16th, 1873, by Simeon D. Porter, at Pueblo, Colorado. Sec. 6 & 7, town. 23 S., range 52 W. Pat. sent to Hon. J. B. Chaffee, St. Nicholas Hotel, N. Y. D. S. No. 1844. Filed May 16, 1873. Settled May 12, 1872. Unoffered. No conflicts. Within claim Vigil & St. Vrain. Lots 1 & 2, sec. 6, should be described as south Ark. River. D. K., July 25, '73. Approved Oct. 3d, 1873. Brown. Describe land as south of the Arkansas River in patent. W. W. Curtis. Ex. June 20, '73. C. B. S. Ent'd on S. K. 33. S. & S. W., 27. (Stamped:) Transmitted Oct. 17, 1873. Pat. Oct. 4, 1873. Rec. vol. 135, page 406.

270 We, Anson Beck and James C. Hall, of Bent County, Colorado Territory, do solemnly swear that Simeon D. Porter is a citizen of the United States and the head of a family consisting of a wife and three children, and is an inhabitant of the lots 1 & 2, sec. 6, & N. ½ of NE. quarter of section No. 7, of township No. 23 south of range No. 52 west, and that no other person resided upon the said land, entitled to the right of pre-emption; that the said Simeon D. Porter entered upon and made a settlement in person on the said land since the 4 day of September, 1841, to wit, on the 12th day of *of* May, 1872; he has built a comfortable frame dwelling-house on said land, one and a half stories high, about 20 by 30 feet, with four rooms and kitchen, several doors and windows, board floors and shingle roof, and has lived in the said said house, and made it his exclusive home, from the first day of June, 1872, till the present time; that he did not remove from his own land, within the Territory of Colorado, to make the settlement above referred to; and that he has, since said settlement, plowed, fenced, and cultivated about 15 acres of said land. He has taken out an irrigating ditch, built a stable, a large cattle corrall, a chicken-house, a cellar, and other necessary outbuildings. Claimant uses the land mostly for stock purposes.

ANSON BECK.
JAMES C. HALL.

I, Irving W. Stanton, register, do hereby certify that the above affidavit was taken and subscribed before me this 16 day of May, A. D. 1873.

IRVING W. STANTON, *Register.*

We certify that Anson Beck and James C. Hall, whose names subscribed to the foregoing affidavit, are persons of respectibility.

IRVING W. STANTON, *Register.*
CHAS. A. COOK, *Receiver.*

(Indorsed:) Certificate No. 546. Proof of right of pre-emption. Sec.

6 & 7, T. 23 S., R. 52 W. Pre-emption act, 4th September, 1841. Allowed this 16th day of May, 1873. Irving W. Stanton, register. Chas. A Cook, receiver.

I, Simeon D. Porter, claiming the right of pre-emption under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the public lands, and to grant pre-emption rights," approved September 4, 1841, to the lots 1 & 2, sec. 6, & N. ½, NE. quarter of section number 7, of township number 23 south, of range number 52 west, subject to sale at the land office at Pueblo, Colorado Territory, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of any land in any State or Territory of the United States; nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or person, whatsoever, by which the title which I may acquire from the Government of the United States would inure in whole or in part to the benefit of any person except myself.

SIMEON D. PORTER.

I, Irving W. Stanton, register of the land office, Pueblo, Colorado Territory, do hereby certify that the above affidavit was taken and subscribed before me this 16th day of May, A. D. 1873.

IRVING W. STANTON, *Register.*

271 Land scrip No. 176. For "one quarter section." Genuine. D. McC. Colleges for agricultural and mechanical arts. Act of Congress July 2, 1862. For State of Florida.

Whereas, in pursuance of the act of Congress approved July 2, 1862, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts,"

The State of Florida has accepted the grant provided by the said act, and under the same has consequently a legal claim to ninety thousand acres not locatable by the State itself, but liable to transfer, and may be located by the assignees of said State according to assignment, attested by two witnesses in the form on the back of this instrument, the location by assignees in satisfaction of the claim above-mentioned to be made in virtue of a regular series of scrip, a part of which is this land scrip No. 176, for "one quarter section:"

Therefore be it known that this scrip when duly assigned and attested by two witnesses, under such authority of the said State as the
272 act of the legislature thereof may designate, may be surrendered at any land office of the United States in satisfaction of a location of "one quarter of a section" or for any quantity in one legal subdivision less than one-quarter section, where such location is taken in full for one-quarter section, the location to be restricted to vacant public lands subject to entry and private sale at $1.25 per acre, mineral lands excluded; and whilst the aggregate location of all the claims under the said act may be taken in any of the Territories without limitation as to the quantity located

in any one of them, yet in virtue of express limitation in the statute "not more than one million acres" of the total aggregate scrip issue under said act can be located within the limits of any one of the States.

Given under my hand and seal of the Department of the Interior on the 23d day of December, A. D. 1872, and of the Independence of the United States the ninety-seventh.

[SEAL.] B. R. CAMM,
Acting Sec'y of the Interior.

Recorded, vol. 205, page .

WILLIS DRUMMOND,
Commissioner of the General Land Office.

(On left margin:) W. K. Mendenhall.

(Endorsed on back:)

STATE OF FLORIDA, CITY OF TALLAHASSEE,
March 27' 1873.

273, 274 In virtue of the act of the legislature of the State of Florida, chapter 1166, session laws of Florida, approved February 18th, 1870, and amended 1872, a copy of which has been filed in the General Land Office at Washington, D. C.:

I, William D. Bloxham, vice-president of the Florida Agricultural College, for value received, do hereby assign and transfer to Simeon D. Porter, of Bent County, Territory of Colorado, this scrip No. 176, and authorize the said assignee to locate the same upon the terms and conditions specified in said scrip.

Given under my hand and seal this 27th day of March, A. D. 1873.

[SEAL.] W. D. BLOXHAM,
Vice-President of the Florida Agricultural College.

Attest:
G. F. LEWIS,
WM. E. LEWIS.

(Stamped:) General Land Office, located and patented.

275 U. S. circuit court. Before Judge Hallet, Denver, Aug. 4th, 1877.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
DAVID H. MOFFAT, JR., RESPONDENT.

Col. L. PAYTON sworn for the complainant.

Ques. Give your full name.
Ans. Lucius Payton.
Q. Where do you reside?
A. At Lynchburg, Virginia.
Q. What is your occupation?
A. I am special agent of the Department of Justice.
Q. Examine the papers now handed you and state what they are with reference to what files or records of what Department they are composed.

A. I got these papers from the files of the Land Office in Washington City, of the Interior Department.

Q. Are you the custodian of these papers at this time?

A. I am, sir.

276 Q. Do they constitute a part of the original files of the records of the Interior Department?

A. They do.

(Plaintiff's counsel offer said paper in evidence.)

DEFENDANT'S COUNSEL. What are they—what are they called?

PLAINTIFF'S COUNSEL. There is agricultural college scrip of Florida; papers of pre'm'tion of land down on the Arkansas River; certificate of location; non-mineral affidavit. That is all of them, sir.

Q. Are there like papers in all these cases?

A. Yes, sir.

Q. All the same papers in each case?

A. Yes, sir.

Q. You have examined them all, have you?

A. Yes, sir.

(Plaintiff's counsel here offer in evidence the following records and files from the Interior Department of the United States, namely: Nineteen sets of pre-emption papers, each set consisting of one piece of agricultural college scrip of the State of Florida, and one proof of pre-emption right

277 consisting of the affidavit of two witnesses and the affidavit of the alleged claimant or pre-emptor; the certificate of the location of the Agricultural college scrip by the register and receiver of the Pueblo land office, a non-mineral affidavit; & the certificate of the register alone of the location of the scrip on the land. These are each in the nineteen pre-emption cases being the papers applying to the land described in sets numbered 9, 10, 11, 12, 13, 16, 18, 19, 20, 21, 24, 25, 26, 27, 29, 30, 32, 33, & 35, which are consolidated with case number nine upon the grand docket of this court.

(Defendant's counsel objects to the introduction of this testimony on the ground of irrelevancy.

Obj. overruled, & def't excepts.)

Q. Examine the eight sets of papers now handed you, and state what they are.

A. These are certificates and papers from the Interior Department.

Q. Are they records and original files of the Interior Department of the United States?

A. Yes, sir.

278 Q. Do they consist of similar papers of the proof of the right of pre-emption and location of agricultural college scrip that have just been shown you and introduced in evidence?

A. Yes, sir.

(Plaintiff offers in evidence these eight cases, which are consolidated with case number fourteen, as a part of the chain of evidence to prove the forgery—as a part of the same general transaction to show the confederacy charged in the bill. They are the location of the agricultural college scrip in cases numbered 524, 538, 526, 529, 528, 533, 537, 548, located in the names of Henry H. Perry, Charles F. Walling, Slicer B. Evans, Orton Spencer, Kaleb Wilson, Sam'l A. Long, Amos K. Howe, and Philip Quinlan.

Defendant's counsel objects on the ground of irrelevancy, and because there has been no proper foundation laid for their introduction.

The court overrules the objection and allows the papers to go in, if they are followed up with the proper proof of forgery.

279 To which ruling of the court in overruling said objections the defendant, by his counsel, then and there excepted.)

PL'T'F'S COUNSEL. The numbers of the locations of the register's and receiver's certificates, and the names of the parties in whose names the locations were made of the first 19 cases or sets of papers heretofore introduced are as follows, namely: number 545, Eli Turner; 550, George Taylor; 558, Henry D. Sampson; 557, Jacob Linden; 531, Arthur Maclare; 553, Phelps Johnson; 549, James Rogers; 540, Sam'l R. Bruce; 554, Richard Seymour; 547, James C. Hall; 551, Charles M. Clark; 525, Michael Quinlan; 530, Charles R. Day; 556, Stearl S. Sims; 544, Anson Beck; 527, Oran R. Peasley; 560, Samuel Cutler; 546, Simeon D. Porter; 532, James Irwin.

Q. Examine these papers and state, if you know, what they are.

(Papers handed witness.)

A. Pre-emption papers and the proofs.

Q. What records and files do they form a part of, if you know?

A. I got them off the files of the Land Office, at Washington City, which is a portion of the Interior Department.

Q. Are they similar in character to the sets of papers heretofore

280 introduced, of which you stated you were the custodian?

A. Yes, sir.

(Plaintiff now offers in evidence three other cases, which are not in either of the suits pending, but under the rule of evidence which we propose to follow up by proof that they are forged by the same parties, viz: register's and receiver's number 552, in the name of Thomas Harris; 539, in the name of Jared Howe; and 559 in the name of Alex'r J. Farman, each containing one piece of agricultural college scrip; one proof of pre-emption, consisting of the affidavit of two witnesses and the affidavit of the claimant; register's and receiver's certificate of location; the register's certificate of the proof and location of the scrip, and a non-mineral affidavit, all purporting to have been made in the name of the parties heretofore given.

To the introduction of which in evidence the defendant obj., but the court overruled the said objections, and the defendant, by his counsel,

281 then and there excepted.)

Q. State to the court what experience you have had with regard to the examination of papers and comparison of handwritings, and whether or not you consider yourself competent to give an opinion as an expert upon the comparison of handwritings.

(To which question defendant, by his counsel, objects, for the reason that the same is improper in calling for the witnesses own opinion as to his capacity to judge of handwritings by comparison.)

The COURT. I think that part of the question as to his opinion of his ability may be omitted. He can state what experience he has had in the examination of writings in reference to the comparison of different hands.

Q. Answer the question, then, except that portion of it which refers to your own opinion.

A. I was examining agent of land claims in the Pension Office in Washington City for many years, and necessarily had to examine handwritings; I had a good deal of experience, of course, in that way.

Q. State what other experience you have had.

A. Well, I have been traveling 'round on similar business to
282 this through the different States for a number of years and have been upon the stand frequently to testify in connection with handwriting.

Q. State what experience you have had in examining papers and in giving testimony with reference to the comparison of handwritings and signatures.

A. I have done it very frequently in many instances.

Q. I will now ask you to examine the 19 sets of papers first introduced in evidence, and before described, and state your opinion with reference to whether or not all the 19 sets of papers were written out and the names of the witnesses and the names of the pre-emptor claimants and the writing in the body of the papers were made or written by one and the same individual.

(To which question the defendant objects, on the ground that the opinion called for by the question is not evidence; that no sufficient foundation has been laid for the examination of this witness as an expert; and for
283 the further reason that the testimony is irrelevant and not applicable to any issue joined between this complainant and respondent.

Objections overruled, and defendant, by his counsel, then and there excepts.)

A. I have examined these papers repeatedly and thoroughly, and I believe the signatures are all written by the same man.

Q. What signatures do you refer to as having been written by the same man? State specifically.

A. The signatures to the proofs of pre-emption, the signatures of the register and receiver, and the signatures to the non-mineral affidavit.

Q. In your opinion who filled in the name of the assignee in whose name the scrip was entered or located; that is, who wrote the name of the assignee on the back of said scrip, in which names the pre-emption location was made?

A. I believe it was done by the same person who filled up all these papers and wrote all these signatures.

Q. How carefully and how often have you examined all these 19 sets of papers referred to, in regard to which you are now testifying, the handwriting in the body of the instrument and the signature?

A. I examined them very thoroughly two years ago here in this
284 town; I don't know how many times; I suppose a dozen times; and I have examined them several times in this case since I have been here.

Q. You may give any particular reasons you have as a foundation of your opinion that these papers, both the bodies of them, except the agricultural scrip and the signatures thereto, were written out and the signatures put to them by the same individual.

A. Well, there is a similarity in all these signatures; the different names are written always exactly alike.

Q. State whether or not the names of the pre-emption claimants and

assignees of the agricultural college scrip are all the same; that is, that the witnesses in some cases being claimants and in other cases being witnesses.

A. Yes, sir; there is only thirty men altogether; they are witnesses for each other throughout.

Q. I now ask you to examine the eight cases before referred to as numbers 524, 538, 526, 529, 528, 533, 537, and 548 and state your opinion with reference to whether or not the bodies of these papers, excepting the piece of agricultural college scrip of the State of Florida, and the signatures to the papers were written by one and the same person.

A. Yes, sir; I feel satisfied of it in my own mind.

285 Q. State if you have examined these papers before; and, if so, howmuch, and when.

A. I examined them repeatedly two years ago and several times since I have been here now.

Q. State in what handwriting, in your opinion, is the filling in of the names of the locators or supposed locators in the assignment on the back of the agricultural college scrip.

A. I think the same person's who filled up all these papers.

Q. State your opinion with reference to whether or not the same party that filled up the eight sets of papers you are now testifying about, filled up the 19 sets of papers that you have just heretofore testified to—whether they were filled up and the signatures put to them by one person.

(To which question defendant objects for the reason that it assumes a fact not proven.

Obj. overruled and exceptions taken.)

A. Yes, sir; I believe they were filled up by the same person.

Q. Examine the three sets of papers now handed you, being numbers 522, 539, and 559 heretofore described, and state your opinion with reference to whether the bodies of these papers and the signatures to them, except the agricultural college scrip, were each made by the same person.

286 (Same objection as to the former question. Overruled and exception taken.)

A. Yes, sir; I think they were.

Q. State how much and how often you have examined these three sets of papers.

A. I have examined them repeatedly, two years ago and since I have been here this time.

Q. State what your opinion is in regard to these three sets of papers being filled up by the same person as the 19 sets of papers and the 8 sets of papers heretofore described, about which you have testified, that the same person filled them up.

A. I think they were all filled up by the same person.

Q. And with reference to the signatures what do you say?

A. The signatures were written by the same person, I think.

Q. If you know anything further with reference to the writing of these papers, or by whom they were written or filled out, or with reference to their being written by the same person and signatures added, you may state it.

A. I don't know the person by whom they were written, but am satisfied they were all written by the same person.

287 Cross-examination:

Q. You say, Col. Payton, you are in the employ of the Department of the Interior?

A. No, sir, not now; I have been.

Q. What is your present employment?

A. Special agent of the Department of Justice.

Q. How long have you been in that employment?

A. About three years; I have been in several other Departments, but in this about 3 years.

Q. How long have you been in other Departments?

A. My recollection is I was pension officer 8 years.

Q. What is your business or profession independent of Government positions?

A. I have been holding Government positions most of the time for 25 years.

Q. State what these positions were as near as you can remember.

A. I was in the Pension Office; then I helped to remove the Indians from Round Lake, Michigan, out to Fort Leavenworth, and that is about as near as I can recollect, sir. In '60 up to '65 I was not in Government employ. I had an insurance company in Philadelphia in 1864 and '5—accident insurance company.

Q. Have you been engaged a considerable length of time in these particular cases?

A. I have been engaged in similar business for the last three years.

288 Q. Have you been engaged in this land business?

A. No, sir; I have been examining marshal's accounts through the different States.

Q. When was it you made a special examination of these cases two years go?

A. It was in this case I made the examination. I won't be certain about the time, but I think it was two years ago. I came out to assist Mr. Jacobson.

Q. Were you not actively engaged in the preparation and prosecution of these cases at that time?

A. Yes, sir.

Q. Are you not now actively engaged in the preparation and prosecution of these cases?

A. Yes, sir.

Q. Do you not take it upon you to endeavor to obtain such testimony as in your judgment the cases seem to require?

A. Yes, sir.

Q. Have you examined these papers in connection with certain persons it has been proposed to put on the stand in this case, with a view of eliciting their opinion in regard to this handwriting?

A. One of them; I don't recollect but one.

Q. Have you not sought to convince that person by arguments and expressions of your own ideas that he could testify it was one and

289 the same handwriting?

A. No, sir, I think not.

Q. You told him what you desired to prove?

A. Yes, sir.

Q. Have you not traveled extensively around this Territory for the purpose of getting evidence in this case?

A. Not in this Territory; I have traveled extensively in connection with the cases.

Q. I wish you would state a little more particularly what renders you, in your opinion, an expert in the comparison of handwritings.

A. I have stated about all I can state. It was my business to examine handwritings in the Pension Office.

Q. In what way did it become your business?

A. I had to examine the claims for bounty land and the different signatures to them.

Q. But then in great part it was nothing more than the examination of such documents as happened to come to that bureau, was it?

A. Yes; I had to compare signatures in one case with signatures in other cases.

Q. Was it in discharge of your duties to make these comparisons?

A. Yes, sir.

Q. In what way?

290 A. Sometimes the men in the same company would make claims for bounty land and would be witnesses for each other, the same as these parties have.

Q. Are you at all familiar with the proceedings usually had in the Land Office in reference to the pre-emption and entering of lands?

A. No, sir, I am not.

Q. Are you not aware of this fact, at all events: that it very frequently happens that pre-emptors are witnesses for each other when pre-empting land contiguous or land in the same neighborhood?

A. I have had very little to do with land cases.

EUGENE K. STIMSON sworn for complainant.

Q. Where do you reside?

A. Pueblo.

Q. How long have you lived there?

A. About six years.

Q. What is your occupation?

A. Civil engineer.

Q. Were you ever employed in the land office of Pueblo?

A. No, sir.

Q. Were you acquainted with one Charles Williams, the clerk in the land office there?

A. I was well acquainted with him.

Q. How long did you know him?

291 A. I have known him for five years.

Q. When did you know him?

A. I knew him when he was residing in Pueblo.

Q. When was that?

A. That was in 1874.

Q. Was he there in the year 1873?

A. Yes, sir; I think he was.

Q. Did you ever see him write?

A. I have seen him write frequently.

Q. Did you see him write frequently enough to know his handwriting?

A. Yes, sir; I think I could recognize his handwriting.

Q. Have you had any such experience as enables you to testify as an expert in regard to comparisons of handwritings?

A. I have not.

Q. Examine the sets of papers now handed you, being the 19 sets first introduced in evidence in this case, and state your opinion with reference to whether or not Charles Williams wrote the bodies of these papers (papers handed witness).

(Defendant obj. No foundation laid here for a mere opinion. Overruled and exception taken.)

Q. Examine the papers in set 550, and state whether or not the
292 bodies of the papers shown you, except the agricultural college scrip, are in the handwriting of Charles Williams.

A. I should recognize that as being his handwriting. Set No. 558 also; set No. 557 also; also set No. 531; also set No. 553; also set No. 549; also set No. 540; also set No. 554; also set No. 547; also set No. 551; also set No. 525; also set No. 530; also set No. 556; also set No. 554; also set No. 527; also set No. 560; also set No. 546; also set No. 532, being the first 19 sets first introduced in evidence.

(Defendant objects to this testimony, and all of like character, on the ground of irrelevance. Overruled and exception taken.)

Q. Examine the 8 sets of pre-emption papers heretofore introduced in evidence in this case, and state whether or not, in your opinion, the bodies of these sets of papers, except the agricultural college scrip, were written or filled up by Charles Williams (papers shown witness).

A. It is my opinion that he wrote the papers in set No. 524; also in set No. 528; also in set No. 526; also in set No. 529; also in set No. 528; also in set No. 537; also in set No. 548; also in set No. 533.

Q. I now ask you to examine the papers in the three sets of pre-emption files heretofore introduced in evidence in this case, and state
293 whether or not, in your opinion, Charles Williams wrote the bodies of these papers, excepting the agricultural college scrip.

A. In my opinion Charles Williams filled in the bodies of the papers, except the agricultural college scrip in set No. 522; also in set 539; also in set No. 559.

Q. State, if you know, what employment or position Charles Williams occupied during the year 1873.

A. He was clerk in the United States land office for Mr. Cook and Mr. Stanton, register and receiver at Pueblo of the Arkansas Valley land district.

Cross-examination:

Q. Captain Stimson, during the period of time to which you have referred, had you frequently seen Mr. Williams in the land office at Pueblo?

A. Yes, sir.

Q. State, if you know, whether it was not his duty, or if he did not, independent and outside of these papers that have been shown to you, very frequently to your knowledge fill up the body of declaratory statements

and other papers relating to the pre-emption of land for the purpose of having the pre-emptors and witnesses sign the same.

294 A. I don't know that I can answer that; I don't know that I ever saw him fill up papers. I have seen him writing in the land office frequently.

Q. Then you have, of course, seen him in the land office filling up blanks?

A. I suppose they were. They were printed forms of some sort or kind.

Q. Can you not also say there were witnesses or pre-emptors standing around waiting to sign them?

A. I suppose I have seen him doing that.

Q. What you mean to say, then, is that your attention was not particularly called to the transaction which might be going on at the time; but have you not seen him frequently at his desk or at the counter writing out documents?

A. Yes, sir; I have.

Q. Have you not, also, seen people standing 'round as though they were about to sign a document or take an oath?

A. Yes, sir.

Q. Often?

A. Yes, sir.

Q. Was it a frequent occurrence?

A. Yes, sir.

Q. In the land office at Pueblo?

A. Yes, sir.

Q. He was then, you think, a clerk in the land office?

A. Yes, sir.

295 Q. For aught that you know these particular papers which you have examined and the blanks, the bodies of which were filled out in the handwriting of Mr. Williams, might have been filled out in the mode and manner indicated?

A. They might.

Q. Then you know nothing about it beyond this fact, that the body of the instruments, so far as they are written out, are, in your opinion, in the handwriting of Mr. Williams?

A. Yes, sir; that is all.

FERD. BARNDOLLAR sworn for complainant.

Q. Where do you reside?

A. Pueblo.

Q. What is your official position or occupation?

A. Register of the United States land office.

Q. Have you in your possession any of the original files or records of that office now?

A. Yes, sir.

Q. Will you produce them and state what they are?

A. They are declaratory statements; I think there is 19 pre-emption filings; they are numbered, 1843, in the name of Eli Turner; 1861, Charles (George) Taylor; 1913, Amos Sampson; 1812, Jacob Linden; 1767, Arthur Maclain; 1882, Phelps Johnson; 1880, James Rogers; 1825,

Sam'l R. Bruce; 1841, James C. Hall; 626, Chas. N. Clark; 1759,
296 Michael Quinlan; 1766, Charles R. Day; 1911, Stearl S. Sims; 1842, Anson Beck; 1761, Oran Peasley; 1844, Simpson D. Porter; 1768, James Erwin; 1758, Philip Quinlan; 1823, Amos K. Howe; 1760, Samuel A. Long; 1765, Wilson; 1764, Orton Spencer; 1769, Slicer B. Evans; 1822, Charles F. Walling; 1859, Henry H. Perry.

Q. State whether or not these papers called declaratory statements which you have just described constitute a part of the records and files of the land office of Pueblo, of which you are the register.

A. They do.

Q. Are they the originals?

A. Yes, sir.

(Plaintiff offers the above papers in evidence. Defendant objects on the ground of irrelevancy; objections overruled and exceptions taken.)

HENRY K. PICKNEY sworn for the complainant.

Q. Do you know Charles Williams?

A. Yes, sir.

Q. Did you know him in the year 1873?

A. No, sir.

Q. When did you know him?

A. I knew him first the first of June, 1874, and relieved him in December of the same year. I took his position at the land office.

297 Q. Did he, before that time, occupy the position as clerk in the land office?

A. Yes, sir.

Q. Did he occupy that position in the land office in the year 1873?

A. I think he did.

(Admitted.)

Q. Have you ever seen him write?

A. Yes, sir; I have seen him write a great deal.

Q. Do you know his handwriting?

A. Yes, sir.

Q. What position do you now occupy?

A. Clerk in the land office at Pueblo.

Q. Examine the declaratory statements now shown you and which have been introduced in evidence in this case, and state whether they are in the handwriting of Charles Williams, the bodies of them.

A. Declaratory statement number 1843, is, in my opinion, in the handwriting of Charles Williams; also No. 1861, also No. 1913, also 1912, also 1767, also 1882, also 1860, also 1825, also 1845; No. 626 is not in his handwriting; No. 1759 is in his handwriting, also 1766, also 1911, also 1842, also 1761, also 1844, also 1768, also 1769; 1758 I think is in Williams' handwriting, but not in his general handwriting; also not 1823; 1760 is in Williams' handwriting; 1765 also; also 1764; No. 1822 I think is not in Williams' handwriting; No. 1859 is in Williams' handwriting.

298 Q. I now ask you to examine the 19 sets of pre-emption papers first put in evidence in this case before the court and described, and state whether or not in your opinion the bodies of the papers composing

these sets, except the agricultural college scrip is written or filled in by Charles Williams.

A. Set number 545 is in Williams' handwriting; also 550, also 558, also 557, also 531, also 553, also 549, also 540, also 554, also 547, also 530, also 551, also 525, also 556, also 544, also 527, also 560, also 176, also 532.

Q. I now ask you to examine the 8 sets of pre-emption papers heretofore introduced in evidence in this case and described, and to state whether or not the bodies of the papers constituting these sets, except the agricultural college scrip, is made or written by Charles Williams.

A. Number 528 is in the handwriting of Charles Williams; also 538, also 526, also 529, also 528, also 533, also 537, also 548.

Q. I now ask you to examine the three sets of pre-emption papers heretofore introduced in evidence, and state whether or not the bodies of the papers composing the files, except the agricultural college scrip, is in the handwriting of Charles Williams.

299 A. Number 522 is in the handwriting of Charles Williams; also 539; also 559.

Q. Is that all you know about that transaction?

A. Yes, sir.

Q. You were not in the office at Pueblo during the year 1873?

A. No, sir.

Q. Do you know anything with reference to Mr. Williams having been an accomplished penman in the way of imitating handwriting?

A. I do not.

Cross-examination:

Q. In reference to these declaratory statements which you have testified were not in the handwriting of Mr. Williams, I will ask you if you mean by that to intimate that it was the simulated handwriting of Mr. Williams or that you didn't know whose handwriting it was?

A. I mean to say that one looked like his handwriting disguised.

Q. Please mark that one.

A. I don't think it is his handwriting, though some parts of it look like it; I cannot testify that it was or was not.

Q. You mean to say, then, that as to any of these certificates that
300 are not in the ordinary handwriting of Mr. Williams you have no knowledge?

A. No, sir; none at all.

Q. Have you any opinion to express?

A. No, sir.

L. PAYTON recalled for compl't.

Q. Examine the declaratory statements of pre-emption filings Nos. 1913, 1843, 1861, 1912, 1767, 1882, 1860, 1825, 1845, 626, 1766, 1911, 1842, 1761, 1759, 1844, and 1768, and state with reference to whether or not in your opinion the same person who wrote or filled in the bodies of these declaratory statements also wrote or put the signatures to them.

(Defendants' counsel objects to this question; same objection made when Col. Payton first testified. Obj. overruled and exceptions taken.)

A. I believe they are all written by the same person; I have examined them.

Q. How often and how much have you examined these declaratory statements which you now testify that both the bodies and the signatures are in the same handwriting?

A. I have examined them two or three times since they have been here and I examined a portion of them in the land office at Pueblo.

Q. I now ask you to examine declaratory statements and pre-
301 emption filings Nos. 1769, 1760, 1765, 1764, and 1859, and state whether or not, in your opinion, the bodies of the last-named declaratory statements and the signatures to them were written by one and the same person.

A. I think so.

Q. I now ask you to examine declaratory statements or pre-emption filings No's. 1823, 1758, and 1822, and state whether or not in your opinion the bodies of these three declaratory statements and the signatures to them were written by the same person who wrote the others that you heretofore examined and testified to.

A. Yes, sir.

Q. State whether or not in your opinion the bodies and signatures in the last three you have testified to are written in a forced or simulated hand and not in the common hand of the party writing it.

A. Yes, sir; they are written in a disguised hand.

Q. I will ask you whether or not all the papers that you have examined and testified about in this case and the signatures to them are written by one and the same person.

A. Yes, sir; it is my opinion.

Q. I will ask you whether or not, in your opinion, the signatures to all the pre-emption papers that you have examined and testified re-
302 garding to this morning are written not in the natural hand of the person whose signatures they purport to be, but in the disguised hand or simulated hand of some other person.

A. I feel satisfied that they are all written in a disguised hand, although the signatures on these three declaratory statements are not so much disguised but that I think any good judge of writing could tell them.

Q. Examine the papers I now hand you and state what they are, and what office they came from, and what files or records and part of them are; what is the paper you now hold?

A. This is what they call in the office a "jacket," letter "P, 54269." I believe from the marks it is an office paper from the Interior Department.

(Plaintiff now offers in evidence what is termed a "jacket," marked with a letter K No. 54296, being a certified copy of the said jacket from the Interior Department.

Obj. to. Obj's sustained, and plaintiffs except.)

Cross-examination:

Q. Col. Payton, I understand your testimony on being recalled, as well as your former testimony, to the effect that certain writings exhibited to you were written by one and the same person, is a mere matter of
303 opinion, and is not based upon any knowledge of your own as to who made these writings, nor yet upon any knowledge of your own as to the actual and real handwriting of such person.

A. No, sir; I do not know his handwriting and do not know the man.

Q. It is, then, merely a matter of opinion with you?

A. Well, I am satisfied in my own mind.
Q. But is it not, after all, an opinion?
A. Yes, sir; it's my opinion.

THOMAS O'BRIEN sworn for complainant.

Q. Where do you reside?
A. In Denver.
Q. What is your occupation?
A. Clerk?
Q. What has been your occupation for years past?
A. It has been that of clerk since 1851.
Q. State what your experience has been with regard to the examination of handwritings and signatures and the comparison of handwritings and signatures since 1851.
A. I was nine years a clerk in Washington, in the Patent Office and Pension Office. Eight years after that I was engaged in the prosecution of claims against the Government, in the preparation of papers for signature in
304 the Pension Office and in the business of making land warrants; in the Patent Office recording specifications of inventions five years. My experience is based upon seventeen years of that kind of occupation.
Q. Have you ever testified, as an expert, upon the subject of comparison of handwritings? If so, state how much experience you have had in that regard.
A. I have never testified as an expert.
Q. State how much you have examined papers and signatures with view of determining whether signatures and papers were written in the same handwriting of an individual or in disguised or simulated hands.
A. My attention has been drawn to that about 7 years in particular.
Q. You have given the subject much attention and examination.
A. Yes, sir.
Q. Examine the papers I now hand you, being the thirty sets of preemption papers which were introduced in evidence in this case before the court, and state whether or not you recognize these as papers that you have before examined.
A. I have examined them frequently.
Q. State whether you have examined them with a view of determining as an expert whether the handwriting in the bodies of the instru-
305 ments or all the bodies and all the signatures were written by the same person.
A. That is my judgment.
Q. You may state fully what your opinion is upon the subject of whether or not the bodies of these instruments and the purported signatures of the pre-emptors and witnesses are in the same handwriting and written by the same person.
(Defendants' counsel objects to the foregoing question for the reason that the testimony is irrelevant; and secondly, for the reason that expert testimony is not admissable in this case; and 3rd, for the reason that no sufficient foundation has been made by this witness that he is competent to judge as an expert in regard to the handwriting concerning which he is interrogated.
Objections are overruled, and defendant, by his counsel, then and there excepts.)

A. I have no doubt of it whatever.

Q. State fully your reasons for that opinion.

A. I give that opinion by reason of all the knowledge that I can possess by comparison of handwritings. In order that my answer may be
306 fully understood I wish it to go to this extent, that the same party that filled up the body of these papers not only signed the witnesses' names to them, but also the register's and receiver's names.

Q. State whether or not, in your opinion, the signatures to these papers of the claimants and the witnesses and the register's and receiver's signatures are in a disguised or simulated handwriting.

A. There is no question in my mind about its being disguised handwriting.

Q. State whether or not the writing in the larger part, in the bodies of these instruments or papers, are in the natural handwriting of the person making them.

A. I think so.

Q. State whether or not you have compared the handwriting of the signatures to all these papers, and whether or not the forced or simulated handwriting consists of from three to six different characters, and that the signatures of the witnesses and the claimants are written in from three to six simulated hands when compared.

A. Yes, sir; that is my judgment.

Q. State whether or not, in your opinion, the signatures mentioned were written in from three to five different kinds of ink, and with
307 different pens which may have been used at the time they were made.

A. I cannot state they were written with different pens; as to more than two kinds of ink, I do not think there was more than two kinds used.

Q. State whether or not, from your examination of the thirty sets of papers your attention is more particularly called to, there are more than thirty names, which thirty names constitute the ninety registers in the thirty sets of papers.

A. That is the number they cross-swear for each other.

Q. What do you say with reference to whether or not the signatures purporting to be the signatures of the register and receiver were also written by the same party who wrote the body of the instruments?

A. I give it as my judgment that my answer should go to that extent, that I believe that the same party that wrote the body and made the signatures of the claimants and witnesses also made the signature of the register and receiver.

Q. Does your testimony given in this case apply to the whole thirty sets of pre-emption papers which you have heretofore examined?

A. It does.

308 Q. Examine the declaratory statements or pre-emption filings heretofore introduced in evidence in this case, numbered 1842, 1764, 1761, 1911, 1766, 1845, 1825, 1860, 1882, 1767, 1912, 1861, 1843, 1913, 1759, 1769, 1760, 1765, 1859, 1768, and 1844, and state whether or not in your opinion the bodies or filling in of these declaratory statements and the purported signatures thereto were written by one and the same person.

A. I think so.

Q. Examine number 626 and state what your opinion is with reference to the body of the instrument and the signatures being the same.

A. They are the same.

Q. Examine numbers 1822, 1758, and 1823 and state whether or not in your opinion the same person who wrote the body of the declaratory statement put the signatures to them.

A. Yes, sir.

Q. State whether or not in your opinion the bodies of these instruments last shown you are in a simulated or disguised hand.

A. In a disguised hand.

Q. Are the three papers last shown you in your opinion written by the same person who wrote all the others?

309 A. Yes, sir.

Cross-examination:

Q. I understand that your testimony in regard to the handwriting concerning which you have testified is an opinion based upon your experience as a penman and from the examination heretofore of writings, and that it is not based at all upon any personal knowledge you have relating to this handwriting?

A. I do not know the party who did it.

Q. And you have no knowledge of his handwriting?

A. No, sir.

Q. It is merely a matter of opinion?

A. Yes, sir.

JACOB O. BOSWORTH sworn for complainant.

Q. Give your full name.

A. Jacob O. Bosworth.

Q. What is your occupation, and where do you reside?

A. I reside in Denver; occupation, druggist.

Q. Do you know one Charles Williams?

A. I do.

Q. When did you know him?

310 A. I first became acquainted with him in June, '74.

Q. In what capacity was he then acting?

A. As clerk in the land office at Pueblo.

Q. What was your occupation at that time?

A. I was also a clerk there at that time.

Q. At the same time Charles Williams was?

A. Yes, sir; for about two months.

Q. How frequently have you seen him write?

A. Almost every day for the two months that I was there, and some afterwards.

Q. Do you know his handwriting?

A. Yes, sir.

Q. Have you examined the thirty sets of pre-emption papers which have heretofore been introduced in evidence in this case, which I now show you, with a view of forming an opinion whether Charles Williams wrote the filling in in the bodies of these papers, except the agricultural college scrip?

A. Yes, sir.

Q. Are they or not, in your opinion, in his handwriting?

A. Yes, sir, they are.

Q. What has been your occupation during the last five or ten years with reference to clerical duties, and your experience in judging of handwriting?

311 (Defendant objects, excepting so far as it relates to what his occupation has been. Overruled, and exception taken.)

A. During the years 1870, 1871, and most of 1872, I was book-keeper and clerk in a dry-goods store, and from the first of January, 1873, to the first of January, 1874, I was both book-keeper and teller in the Bank of Denver, and then I had no regular employment until the first of June, when I went in as clerk for the receiver at Pueblo and stayed with him until the first of September—through June, July, and August—and then went into the drug business in Denver, at which I have been ever since.

Q. Have you examined these 30 sets of pre-emption papers that have been referred to with a view of forming an opinion as to whether the same person—Charles Williams, as you testify—who wrote the bodies of the papers also wrote the signatures?

A. I have examined them; yes, sir.

Q. I will ask you to state your opinion as to whether or not the signatures to the proofs of pre-emption—the name, of the witnesses and the claimants in the proof of pre-emption—were written by Charles Williams or by the same party who wrote the bodies of the instruments.

312 (Defendants' counsel objects.)

Cross-examination by defendants' counsel upon his qualification to testify as an expert:

Q. (By defendants' counsel.) I will ask you if, from the experience which you have had in mere clerical duties you regard yourself as an expert in the matter of handwriting? In judging of the similitude of handwriting; in judging as to the genuineness or as to who wrote certain documents which may be presented to you, by comparison?

A. I cannot say that I am; my experience almost entirely in that matter is the year I was in the bank; that is the practical part of it, and then I simply had to distinguish signatures to checks.

Q. Had you during the time you testify to any occasion whatever to examine by comparison the handwriting of different documents presented to you and to judge as to whether the one was genuine or not, or both were forgeries; or whatever the case might be?

A. I don't remember of any more than ordinary checks.

Q. What you mean to say is that if a check was presented to

313 you while you were in the bank you, of course, formed your own judgment as to whether it was genuine or not?

A. Yes, sir; by comparison with his signature in the book.

Q. But beyond that had you any occasion to examine any other documents and to judge and state whether the one or the other was genuine or not?

A. No, sir; I don't know that I had.

Q. Then, if I understand you, during the time that you have spoken of in your direct examination you simply judged of handwritings as presented to you as an ordinary clerk would?

A. Yes; and as a cashier or payer of checks.

Q. But you never at any time made it your special business or object to

compare different handwritings of different instruments, and say whether the one or the other was genuine or was not?

A. No, sir; with the exception perhaps in the capacity of juryman.

Q. How often have you been a juryman during this time?

A. Twice; but in only one case of forgery, though.

Q. From all the experience you have had state whether or not you regard yourself as expert in this matter of comparison of writings.

314 A. I do not.

(Plaintiff does not offer him upon his opinion as an expert alone, but because he has watch' Williams write, etc.)

Direct examination resumed:

Q. Have you, during the time you were there in the office with Mr. Williams, seen him or watched him disguise his handwriting and imitate signatures?

(Obj. to on the ground of irrelevancy. Obj. overruled and exception taken.)

A. I have, and yet I don't know as I ought to say watched him. A good many times we would not have much to do and we would be writing—scribbling on pieces of paper—and I have seen him write some of the names here.

Q. What names have you seen him write that you find in these papers?

A. Irwin W. Stanton and Charles Cook.

Q. Have you seen him write their names in a disguised hand or in imitation of their signatures so that they looked like these you have seen here?

A. I have.

Q. Have you seen him imitate other signatures?

A. Yes, sir.

315 (Defendant obj. to that question and answer as not relating to any of the parties in this case, nor yet to Stanton or Cook. Overruled and exception taken.

Q. I believe you stated you had seen Charles Williams write other signatures than those of Stanton's and Cook's in imitation of signatures he would have before him, and he would imitate it expertly.

A. Yes, sir.

Q. State whether, in your opinion, from your knowledge of his handwriting and having seen him write frequently, and from your examination of these papers, it is your opinion that Charles Williams wrote the signatures as well as the bodies of the instruments.

(Def't obj. same as before. Overruled and exception taken.)

A. It is my opinion.

Q. Does your answer to the last question or interrogatory apply to all of the 30 sets of pre-emption papers, excepting the agricultural college scrip included in those which you have examined?

A. Yes, sir. I can't say positively that I have examined every paper. In looking them over I won't say positively I saw every piece.

316 Q. I will ask you to examine declaratory statements and pre-emption filings numbered 1758, 1913, 1861, 626, 1842, 1764, 1911, 1761, 1825, 1860, 1882, 1845, 1766, 1843, 1912, 1767, 1759, 1769, 1760, 1765, 1859, 1768, 1844, 1822, and 1823, and state, if you have examined

these papers before, as to the handwriting of the bodies and the signatures thereto.

A. Yes, sir.

Q. State, from your examination of these papers and your knowledge of Williams' handwriting, whether or not, in your opinion, he wrote the bodies of the statements and also the signatures.

(Defendant obj.; no proper foundation has been laid for the testimony of this witness as an expert in the matter of the handwriting, of which he has no absolute personal knowledge. Overruled and exception taken.)

A. As to the bodies of all the papers, excepting four, I am certain that Williams wrote it. Here is four declaratory statements that are in a different handwriting from the others, and I can only judge as a matter of opinion. In my opinion, they were written by the same party. And also regarding the signatures it is only my opinion that Williams wrote them.

Q. How long were you in the office as a clerk—in the land office at Pueblo with Williams?

317 A. I think he was there about two months after I went in.

Cross-examination:

Q. Do I understand you that these exhibitions of skill on the part of Williams were exhibited by him to you when you were otherwise disengaged in official or clerical duties?

A. It was a mere matter of pastime with us—in fact at the time I knew nothing about this case.

Q. Did you at the same time or times also indulge in the same pastime of seeing how nearly you could imitate the signatures of various individuals?

A. I don't remember of it, because I cannot do it; it is out of my line.

Q. Then, I understand, these exhibitions were made as a mere matter of amusement?

A. That is all.

Q. As I understand you, if he saw fit to imitate the supposed signatures of Henry Clay or Daniel Webster, or any other man, he would then and there have done it?

A. He did do it of public men. I have seen him imitate that of Treasurer Spinner.

Q. The idea at the time, then, was simply this, that he was showing how nearly he could imitate the handwriting of various persons.

318 A. Yes, sir; and without any particular purpose that I knw of.

PL'T'F'S COUNSEL. That is all the testimony we desire to take.

MONDAY AFTERNOON, *Aug.* 6, '77.

CLARENCE CLARK sworn for defendant.

Q. Are you acquainted with Irving W. Stanton?

A. Yes, sir.

Q. How long have you known him?

A. About twelve years.

Q. Are you acquainted with his handwriting?

A. I was at that time.

Q. When and where were you acquainted with his handwriting?

A. I could not give you the exact date. He was clerking over at Moffat's store at the time I was there, and I became familiar with his handwriting from seeing it every day.

(The witness is now shown the envelope with the name of Orin R. Peasley on it, together with the papers therein contained.)

319 Q. Please examine these papers, so far as the signature of Mr. Stanton is concerned; but before that question state your means of information or the extent of your information in regard to the writing of Mr. Stanton.

A. Well, we were in the store together—clerking together—and constantly writing by each other's side.

Q. How long time were you in the store together?

A. Three, four, or five months; I cannot tell exactly.

Q. And you have frequently seen him write?

A. I have, sir, in that time.

Q. Then I will ask you whose signatures these are that are attached to these papers purporting to be those of Stanton's?

(Plaintiff obj. Stanton is within reach of a subpœna, and that the witness has not shown that he has any sufficient competency as a clerk to judge of handwriting by comparison. Overruled and exceptions taken.)

A. This is Irving W. Stanton's signatures.

Q. Take envelope marked 550, having the name of George Taylor on the back, and look at the papers contained in that envelope and state

320 if the signature of Mr. Stanton to these various papers are genuine or not.

A. Yes, sir; I should say that was Stanton's signature.

(Plaintiff objects further to this testimony that it is irrelevant. Overruled and exceptions taken.)

Q. Mr. Clark, state, if you can, whether what you have already testified to in reference to the signature of Stanton is true in reference to all of these papers?

A. I do not think I have examined them all.

(The witness is now shown the nineteen sets of papers heretofore exhibited to the witnesses Payton, O'Brien, and others and examined them all.)

Q. Examine these papers, Mr. Clark, in reference to the signature of Mr. Stanton, (the witness is now shown the eight sets of papers in envelopes heretofore shown to witnesses on the part of the Government), and state what is your belief in regard to the genuineness of Stanton's signature to all of these papers which you have seen.

A. I believe they are the genuine signatures of Irving W. Stanton.

(Witness now shown three other sets of papers heretofore exhibited to the witnesses Payton, O'Brien, and others.)

321 Q. Do you find Irving W. Stanton's name attached or signed to these papers that have been shown you?

A. I do; I think they are all his signatures.

Cross-examination:

Q. How much experience have you had in examining handwriting or signatures of others?

A. I don't know as I have had any experience excepting copying signatures and making signatures, &c.

Q. What has been generally your occupation here?
A. At this time I was clerking in the store of and Moffat.
Q. Have you had any experience detecting simulated or disguised hands?
A. None at all.
Q. Are you or do you claim to be an expert in detecting a disguised from a real hand?
(Def't obj.: witness has not been examined at all in regard to distinguishing handwriting. Obj. sustained.)
Q. How long since was it since you saw Stanton write?
A. I could not give the exact date. It must have been since I saw him write some twelve years ago. I have received some letters from him, and some communications from him were generally signed Irving (or "Irl.").
Q. So you have not seen him write for twelve years?
322 A. No, sir.
Q. Is it not often the fact that signatures sometimes change in that time?
A. Yes, sir; but I don't know why his should.

Redirect examination:

Q. This handwriting is the same that you knew 12 years ago, is it?
A. About the same, sir.

CHAS. A. COOK sworn for defendant.

Q. Have you examined the various land-office papers shown to the witness Clark, and heretofore exhibited to witnesses on the part of the Government?
A. Yes, sir.
Q. To those papers whose names do you find signed as register and receiver?
A. Irving W. Stanton, register, and Chas. A. Cook, receiver.
Q. Are you the Charles A. Cook?
A. I am.
Q. What do you say in reference to that signature?
A. It is my signature.
Q. What acquaintance have you had with the handwriting of Irving W. Stanton, register of that land office?
A. I had been acquainted with him for several years before he
323 went down there, and was in the office with him for three years.
Q. What opportunity had you to become acquainted with his signature?
A. I have seen him writing nearly every day.
Q. You recognize his handwriting in these signatures as it appears in these papers?
A. It is his own signature.

L. DOUGAL sworn for defendant.

Q. Where do you reside?
A. In Denver.
Q. How long have you lived in Denver?
A. I came here in 1860, and have lived here all the time since that time.
Q. What official position do you now occupy?

A. Register of the land office of the Denver district.
Q. Have you heretofore held a like position in the same office?
A. Yes, sir; I was in the land office in 1869.
Q. Do you know Irving W. Stanton?
A. Yes, sir.
Q. Formerly register of the public land office?
A. Yes, sir.
Q. How long have you known him?
A. About 10 or 12 years, I guess.
Q. Have you over seen him write?
A. Yes, sir; frequently.
324 Q. What have been your opportunities for becoming acquainted with his writing, and his signature especially?
A. Receiving letters from him and seeing him sign his name several times to different documents.
Q. Have you examined the papers which have been shown to the other witnesses in this case?
A. I have.
Q. Do you find on those papers the names signed of Stanton, register, and Cook, receiver, of the Arkansas Valley land district?
A. I do.
(Plaintiff's obj's overruled and exceptions taken.)
Q. In reference to the signature of Mr. Stanton's as you see it signed to these papers, state in whose handwriting that name is signed.
(Pl't'f's obj's—immaterial and irrelevant. Obj. overruled and exception taken.)
A. I should think it was the genuine signature of Mr. Stanton.

Cross-examination:

Q. Do you know Mr. Charles Williams?
A. Yes, sir; I have seen him frequently.
Q. Do you know his handwriting?
A. I do not think I could swear to his handwriting only in this,
325 that I have received letters written by him, or rather from the land office at Pueblo which I think were written by him while he was clerk there, but I do not know that I could distinguish his handwriting.
Q. Do you or not know that he was a great expert in the way of imitating signatures or handwriting.
(Defendant's ob'j.—not cross-examination; ob'j. sustained and exceptions taken by defendant.)
Q. Do you or not know that he could sign Cook's or Stanton's name in such a way that it would be very hard to state whether they wrote it themselves or not?
A. I have seen him sign Stanton's name, or rather I have seen letters that he had signed for Stanton and signed "Wm" under it, and it was a very poor imitation of Stanton's signature. I have letters in my office now signed by Williams in Irving W. Stanton's name.
Q. You say he signed under them, by Williams?
A. Yes, sir.
Q. He was not attempting to imitate any signature there, was he?
A. Some of them were signed by him and not signed by Mr. Stanton, which I presume were sent while Stanton was absent.

Q. He did not profess then to make that signature imitate Stanton's signature, did he?

326 A. I do not know; it was a very poor imitation if he did.

HYATT HUSSEY sworn for defendant.

Q. Where do you live?

A. In Denver.

Q. How long have you resided in Denver?

A. Since December, 1862, with the exception of a year I was away—1874.

Q. What was your occupation during the time of your residence in Denver?

A. I was clerk of a bank, and also cashier.

Q. Are you acquainted with Charles A. Cook?

A. Yes, sir.

Q. Are you acquainted with his signature?

A. Yes, sir.

Q. In what way did you acquire your knowledge of his signature?

A. I have seen him sign his name to checks, notes, and deeds.

Q. Often, or otherwise?

A. Repeatedly, a great many times—could not tell the number.

Q. Have you seen these land-office papers which have been shown to the other witnesses here in court?

A. I have, sir.

Q. Do you find the name of Charles A. Cook written to any of these papers?

327 A. I do.

Q. Have you examined that signature?

A. I have.

Q. Well, in whose writing are those signature of names or name written?

A. I believe the signature of Charles A. Cook is genuine.

E. W. COBB sworn for defendant:

Q. Where do you live?

A. In Denver.

Q. How long have you lived here?

A. About 17 or 18 years.

Q. What is your present occupation?

A. Clerk in the surveyor-general's office.

Q. State generally what your occupation or employments have been before.

A. I have been engaged in business here; in mining and in that office a number of years.

Q. Have you been in any occupation involving clerical duties?

A. Yes, sir; book-keeping, examining accounts, etc.

Q. Do you know Irving W. Stanton and Charles A. Cook, formerly register and receiver respectively of the Arkansas Valley land office?

A. I do.

Q. Do you know the handwriting of these individuals?

328 A. I do.

Q. Have you examined the papers shown to the other witnesses

here in court, with a view of examining into the genuineness of the signatures of Messrs Cook and Stanton?

A. I have.

Q. Do you find the names of Stanton or Cook signed to those sets of papers?

A. I have found both of their names signed to them.

Q. In whose handwriting are those signatures?

A. In the handwriting of Mr. Stanton and Mr. Cook.

Cross-examination:

Q. How often have you seen them write?

A. A great many times; Mr. Stanton much more frequently than Mr. Cook.

Q. When and where did you become familiar with their handwriting?

A. As a clerk in the surveyor-general's office I conducted the correspondence; and then I have had frequent occasion to examine papers purporting to bear their signatures.

Q. How often have you seen them write their signatures?

A. Stanton was frequently in the office down at Pueblo, and would write——

Q. But have you seen them often sign their own names to documents?

A. I have had no occasion for that.

329 Q. You get your judgment, then, from signatures attached to papers purporting to be their signatures?

A. Yes, sir.

Q. You can swear to it only from the knowledge you got in the course of correspondence?

A. Yes; and very frequently they would come up into the office with papers, and they would say they had written them.

Q. If their letters were written and signed by a clerk in their office, who was an accomplished penman, you might not know but it was a disguised signature?

A. I do not think that could be. I have had occasion to examine such signatures.

Q. You are an expert, are you, in the judgment regarding disguised or simulated hands or signatures?

A. Somewhat.

Q. Where was it you had experience in that?

A. In business of my own, where I had occasion to judge of drafts drawn upon me, and in business connected with the office—the surveyor-general's office.

Q. But you never saw Cook and Stanton write their own signatures, and saw them do it?

A. I have not watched them.

Q. You never saw them write?

A. I never watched them writing.

330 Redirect examination:

Q. Have you seen them write?

A. Yes, sir.

Recross-examination:

Q. You have seen them writing?

A. Most certainly, sir.

Q. How often?

A. A great many times; I have seen them write very often.

(Defendant admits that the patents to the land in controversy were issued by the land office to the pre-emptor claimants mentioned in them.)

Attest:

(Signed) W. P. MILLER, *Reporter.*

331 UNITED STATES OF AMERICA:

Circuit court of the eighth judicial district, sitting within and for the district of Colorado, of the July term thereof, A. D. 1878.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
DAVID H. MOFFATT, JR., RESPONDENT.

I, Moses Hallett, district judge of the United States for the district of Colorado, do hereby certify that the foregoing depositions of the witnesses, as well on the part of the complainant as the respondent, in a certain cause (the same being entitled as above), and lately depending in the circuit court of the United States of America for the said district of Colorado, wherein the United States of America was complainant and David H. Moffat, junior, was defendant, was taken and given in open court in the said circuit court, at the July term thereof, A. D. 1878, and on the days mentioned in the foregoing report of the said depositions, which said depositions were taken by one Walter P. Miller, esq., a reporter agreed upon and nominated by the respective counsel in said cause or suit, and which said agreement and nomination was by the said court then and there approved, and which said depositions of witnesses were taken by the said reporter under the direction and supervision of the said circuit court in session, and in which court I was then

332 presiding as district judge for the district of Colorado, according to the statutes of the United States of America in such case made and provided; and also that the several interrogatories, and the objections severally made to the respective answers to said interrogatories, and also the objections, and exceptions to the rulings of the said court upon said objections, as the same are set forth and mentioned in the said report of the same by the said Walter P. Miller, esq., reporter as aforesaid, are true and correct; that each of the said witnesses in said report mentioned was duly sworn in said cause, and afterwards examined by the respective counsel for the complainant and the respondent, and also by the court in manner and form as given in the said report, and the said objections, exceptions, and rulings of the court were then and there made and given as set forth in this certificate.

And I also certify that upon the examination of witnesses in said cause in which this certificate is given certain documentary evidence was exhibited to the witnesses so as aforesaid examined in open court, and also exhibited to the said court; that the said documentary evidence, consisting

of a number of papers, were duly marked so as to identify the same, and the witnesses interrogated by the counsel in reference thereto, all
333 of which in said report appears; that the said papers are in said report marked as follows, viz:
That the said exhibits were afterwards offered and received in evidence in the trial of said suit, under such objections thereto made as are given in said report.

And be it remembered and certified that at the time of the pendency of the said suit there was also depending and undetermined in said circuit court a certain other suit or cause, wherein the said United States of America was the complainant and the said David H. Moffat, junior, and Robert E. Carr were the respondents, which said last-named suit was the same in all respects as the said suit herein first named, except that by reason of a certain conveyance by the said David H. Moffat, junior, to the said Robert E. Carr of a portion of the lands in said bill of complaint in said last-mentioned suit mentioned and described, and the legal title to which before the said conveyance to the said Carr appeared to be in the said David H. Moffat, junior, the said Carr became and was a party respondent, impleaded with the said Moffat in the said last-named suit so far as the lands so as aforesaid conveyed to him were concerned; that the counsel for the complainant as well as for the respondent and respondents, respectively, in the said suits were the same in each of the said suits,
334 that by reason of the identity of said suits, except the addition of the name of Robert E. Carr as a respondent with the said David H. Moffat, jr., in the one suit, whereas the said Moffat was the sole respondent in this suit, it was orally and in open court agreed by counsel in said suits respectively that the evidence or testimony taken in the said suit of the said complainant against the said Moffat as sole respondent should stand and be by the said court be considered as testimony taken in each of said suits; that the said stipulation extended not only to the oral testimony so as aforesaid taken in open court, but also to the testimony theretofore taken by a special master in chancery, duly appointed for said circuit court, and by the said master duly reported to said court; that the said report appears of record in this court; that after the taking of said testimony in open court the said court proceeded to examine and consider the whole of said testimony, applying the same to each of said suits; that on the day of , A. D. 1878, the said court, after due examination and consideration of said testimony and applying such testimony, rendered a decree in each of said suits in favor of the complainant therein, which decrees appear of record in said court; but the said oral stipulations, as well as the testimony given as aforesaid, and the order of said
335 court in the premises, to the effect that the testimony in the one cause should be taken as testimony given in the other of the said causes, do not appear of record in the journal of the proceedings of said court in said causes, or either of them, the said stipulations and the said order having been inadvertently omitted in said records.

I also certify that upon the trial of said causes, and in open court, there were exhibited to the said court, and to the several witnesses in said causes sworn and examined, the various original documents aforesaid pertaining to the pre-emption of the lands in controversy in said suits; that the said original documents were then in the position of one Peyton, esq.,

special agent of the complainant in said suits that the said original documents, upon being exhibited as aforesaid, were respectively marked, and the marking thereof is given in the report of the said testimony before mentioned, and as in this certificate hereinbefore more particularly specified; that upon the representation of the said Peyton, esq., and of the counsel for the complainant that the said original documents were of and a part of the archives of the complainant, and belonging to the Department of the Interior as the custodian thereof, and, further, that the said original documents were alike and identical, except as to the names of the alleged
336 several pre-emptors and the description of the several parcels of lands in said documents mentioned, and also that it was the duty of the said Peyton, as such special agent of the complainant, to return the said original documents to the particular custody from whence he obtained the same, and that the names of the said pre-emptors and a description of the lands by them alleged to be pre-empted fully appeared in the bills of complaint in said causes, the said court thereupon made an order that the said Peyton be allowed to permanently withdraw the said original documents upon a filing of a certified copy with the clerk of said court of two (2) sets of said original documents, which were then enclosed in two certain envelopes respectively marked—

The contents of one of the said envelopes being offered and received in evidence in the case of the complainant against said Moffat, and the contents of the other of the said envelopes being offered and received in evidence in case of the complainant against the said Moffat and the said Carr, which was accordingly done; that the said certified copies of the contents of said envelopes by the agreement of the respective counsel for the said parties complainant and respondent in the said causes, and in each of them, was to be received and to be considered in evidence by the said court, and in lieu of the originals thereof, allowance being made in the consideration of the said
337, 338 certified copys only for the difference between said copy and the remainder of said originals not so as aforesaid copied, for the difference of names of pre-emptor and witnesses, and the description of lands, the said original documents and the said copy of a portion of the same, being in all other respects identical in language and form.

And I further certify that the paper annexed to the foregoing testimony orally given in open court, and marked , is a correct transcript of the said original papers so as aforesaid, by certified copy thereof, *are* left remaining in this court.

And I further certify that the foregoing is all of the testimony offered and given in open court upon the trial of said causes; and also that all of the oral stipulations made by the counsel for the parties respectively to said causes made and entered into in open court upon the trial of said causes are hereinbefore in this certificate set forth.

(Signed) MOSES HALLETT, [SEAL.]
District Judge.

JUNE, 1879.

UNITED STATES OF AMERICA:

Circuit court of the 8th judicial district, sitting within and for the district of Colorado.

UNITED STATES OF AMERICA }
vs.
DAVID H. MOFFAT, JR. }

339 It is hereby mutually agreed and stipulated by and between the parties to the above-entitled suit, through their respective counsel, that the stipulations and orders set forth in the foregoing certificate of the Hon. Moses Hallitt, district judge of the district of Colorado, and who presided in court upon the trial of said cause, were made in open court as is in such certificate stated, and that the statements made in such certificates may be, and hereby are, so far as the argument of counsel can avail, made a part of the record of the above-entitled cause, for the purpose of enabling the Supreme Court of the United States to fully consider all of the evidence offered, given, and made upon the trial of said cause in any appellant proceedings that the respondent in said cause may see fit to take.

(Signed) G. G. SYMES,
Special Counsel for United States, Complainant.

(Signed) L. C. ROCKWELL,
Att'y for D. H. Moffatt.

(Endorsed:) No. 9. Circuit court U. S. U. S. of America vs. D. H. Moffatt, jr. Notes of evidence taken before the court. Filed May 27th, A. D. 1878. (S'd) Edward F. Bishop, clerk.

340 And afterwards, and on, to wit, the 12th day of July, A. D. 1878, and in the said circuit court of the United States, the following decretal order was had and entered of record in *in* said cause, to wit:

Decree.

UNITED STATES OF AMERICA } 14. In chancery. To
vs. compel surrender of
DAVID H. MOFFAT, JR., AND ROBERT E. CARR. } land patent.

And now this day come the parties complainant and defendant by their respective solicitors, and the several causes, respectively numbered 14, 15, 17, 22, 23, 28, 31, and 34, having by the order of this court been consolidated into one suit, and said cause of action consolidated as aforesaid coming on now to be heard upon the pleadings and proof herein, the court, after argument of counsel and being fully advised in the premises, having carefully considered the same:

It is now ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the patent dated October 4th, A. D. 1873, by which the United States granted to Philip Quinlan the following real estate, to wit, lots one and two and north half of southeast quarter of section three, township 23 south, of range 52 west of the 6th principal meridian, be, and the same

is hereby, set aside and declared void, and the deed of conveyance to said real estate from the said Philip Quinlan to Henry H. Perry, and the deed of conveyance from the said Henry H. Perry to said David H. Moffat,
341 Jr., and the deed of conveyance from David H. Moffat, jr., to Robert E. Carr, be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Amos K. Howe the following real estate, to wit, the southeast quarter of section ten, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and hereby is, set aside and declared void, and the said deed of conveyance to said real estate from Amos K. Howe to Henry H. Perry, and the deed of conveyance from said Henry H. Perry to David H. Moffat, jr., and the deed of conveyance from the said Moffat to Robert E. Carr, be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Sam. A. Long the following-described real estate, to wit, lots numbered three and four, and the north half of the southwest quarter of section three, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance to said real estate from Sam. A. Long to Thomas Harris, and the deed of conveyance from the said Harris to said David H. Moffat, jr., and the deed of conveyance from the said Moffat to Robert E. Carr, be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. eighteen hundred and seventy-three, by which the United States granted to Caleb Wilson the following-described real estate, to wit, the south half of the southeast quarter and the south half of the southwest quarter of section three, in township twenty-three south, of range fifty-two west of the 6th principal meridian, be, and is hereby, set aside and declared void, and the deed of
342 conveyance to said real estate from Caleb Wilson to Thomas Harris, and the deed of conveyance from the said Thomas Harris to David H. Moffat, jr., and the deed of conveyance from the said Moffat to Robert E. Carr, be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Orton Spencer the following-described real estate, to wit, the northeast quarter of section ten, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance from Orton Spencer to Thomas Harris, and the deed of conveyance from the said Thomas Harris to David H. Moffat, jr., and the deed of conveyance from the said Moffat to Robert E. Carr, be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Slicer B. Evans the following-described real estate, to wit, the northwest quarter of section ten, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby, set aside and declared void, and the deed of conveyance to said real estate from Slicer B. Evans to Thomas Harris, and the deed of conveyance from the said Thomas Harris to David H. Moffat, jr., and the deed of conveyance from the said Moffat to Robert E. Carr, be, and are hereby, set aside and declared void; and that the patent dated October 4th, 1873, by which the United States granted to Charles F. Walling the following-described real estate, to wit, the southwest quarter of section ten, in township twenty-

three south, of range fifty-two west of the sixth principal meridian,
343 be, and is hereby, set aside and declared void, and the deed of conveyance to said real estate from Charles F. Walling to Thomas Harris, and the deed of conveyance from the said Thomas Harris to David H. Moffat, jr., and the deed of conveyance from the said Moffat to Robert E. Carr, be, and are hereby, set aside and declared void; and that the patent dated October 4th, A. D. 1873, by which the United States granted to Henry H. Perry the following-described real estate, to wit, the southeast quarter of section seven, in township twenty-three south, of range fifty-two west of the sixth principal meridian, be, and is hereby, set aside and declared void, and that the deed of conveyance to said real estate from Henry H. Perry to David H. Moffat, jr., and the deed of conveyance from said Moffat to Robert E. Carr, be, and are hereby, set aside and declared void—all of which said lands are within the county of Bent, and in the State of Colorado, and in the district of lands subject to sale at Pueblo, in the Territory (now State) of Colorado.

And it is further ordered, adjudged, and decreed that the said defendants pay to the said complainant its costs in this suit to be taxed, and that said complainant have execution for such costs.

And afterwards, and on, to wit, the second day of September, A. D. 1878, the following additional order was had and entered of record in said court in said cause, to wit:

Order: Appeal allowed.

THE UNITED STATES *vs.* DAVID H. MOFFAT, JR., AND ROBERT E. CARR.	14. In chancery. To compel surrender of patent.

344 At this day comes W. S. Decker, esq., district attorney, who prosecutes the pleas of the United States in this behalf, and the said defendant, by Hugh Butler, esq., his solicitor, also comes.

And thereupon the said defendants pray an appeal herein, which is allowed them.

And it is ordered that the said defendants, within sixty (60) days from this day, file herein a certified copy of the oral testimony herein heretofore had before the court, and his bill of the exceptions reserved by him upon the hearing herein, and said bill to contain the evidence as aforesaid.

And afterwards, and on, to wit, the 29th day of June, A. D. 1880, came again the said defendant, by L. C. Rockwell, esq., his solicitor, and filed in said court and in said cause his bond in appeal, and the said bond is in words and figures as follows, to wit:

345 *Appeal bond, U. S. court, Colorado.*

THE UNITED STATES OF AMERICA,
District of Colorado:

Know all men by these presents that we, David H. Moffatt, jr., of Denver, Colorado, & Robert E. Carr, of St. Louis, Missouri, as principals, and

John L. Routt, as surety, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the said United States of America to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 21th day of June, in the year of our Lord one thousand eigh hundred and eighty.

Whereas lately, at the July term, A. D. 1878, of the United States circuit court of the United States for the district of Colorado, in a suit pending in said court between the United States of America, as plaintiff, and David H. Moffatt, jr., and Robert E. Carr, defendants, judgment was rendered against the said David H. Moffatt, jr., and Robert E. Carr to vacate and annull certain letters-patent issued by the United States for certain lands situate in Bent County, State of Colorado; and the said David H. Moffatt, jr., and Robert E. Carr having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, & served on Hon. E. L. Johnson, United States district attorney for Colorado, citing and admonishing it to be and appear at a term of the Supreme Court of the United States to be held at Washington, D. C., on the 2d Monday of October next:

Now, the condition of the above obligation is such, that if the said David H. Moffatt, jr., & Robert E. Carr shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

DAVID H. MOFFATT, JR. [SEAL.]
ROB. E. CARR. [SEAL.]
JOHN L. ROUTT. [SEAL.]

Approved:

MOSES HALLET, *District Judge.*

JUNE 29, 1880.

346

Justification.

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

I, John L. Routt, surety on the within bond, being first duly sworn, depose and say that I am worth in real estate in Colorado the sum below set opposite my nam', res'y, that is to say, one thousand dollars, over and above all *their* just debts and liabilities, and in property subject to levy and sale upon execution.

JOHN L. ROUTT.

Subscribed and sworn to before me, at Denver, this twenty-first day of June, A. D. 1880.

[SEAL.]

JOHN C. ANDERSON,
Notary Public in and for Arapahoe County, Colorado.

(Indorsed:) Gen. No. 14. U. S. circuit court of the United States, district of Colorado. David H. Moffatt, jr., & Robert E. Carr, plaintiffs in error, vs. United States of America, def't in error. Appeal bond.

$. Filed in the circuit court U. S., this 29th day of June, A. D. 1880. Edward F. Bishop, clerk, by , deputy clerk.

And afterwards, and on, to wit, the 10th day of July, A. D. 1880, came again the said defendant, by his solicitor aforesaid, and sued out of said court a writ of citation, and the said citation is in words and figures as follows, to wit:

347 *Citation U. S. court.*

THE UNITED STATES OF AMERICA,
District of Colorado:

The United States of America to E. L. Johnson, esq., U. S. district attorney for the district of Colorado, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the next term thereof, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein David H. Moffat, jr., and Robert E. Carr are plaintiffs in error and the U. S. is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 10th day of July, in the year of our Lord one thousand eight hundred and eighty.

MOSES HALLETT, *Judge.*

348 *Proof of service.*

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

On this 10th day of July, A. D. 1880, I acknowledge the service upon me, at Denver City, Colorado, of a true copy of the within citation.

EDWARD L. JOHNSON,
United States Attorney for District of Colorado.

Sworn to and subscribed before me this day of , A. D. 18 .
, *Clerk.*
By , *Deputy Clerk.*

(Indorsed:) Gen. No. 14. Circuit court of the United States, district of Colorado. David H Moffott, jr., Robe't E. Carr, plaintiffs in error, vs. The United States of America, defendant in error. Citation. Filed in circuit court of the U. S. this 10 day of July, A. D. 1880. Edward F. Bishop, clerk. By , deputy clerk. , attorney for plaintiff in error.